TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~502.~~ 756

DAVID B. HARRELL, APPELLANT,

vs.

ELISHA H. BEALL, ASSIGNEE OF WILLIAM L. JARRELL, BANKRUPT, APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

FILED DECEMBER 8, 1871.

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INDEX.

	Original.	Print.
Bill	1	1
Exhibit "A"	36	12
"B"	40	14
"C"	43	15
"D"	43	16
"E"	44	16
Subpœna	44	16
Return	46	17
Appearance	46	17
Answer of "David B. Harrell"	47	17
Deed of Feagin to Echols	74	26
Deed of Jarrell to Echols	77	27
Deed of Echols to Harrell	79	28
Deed of Echols to Harrell	81	29
Answer of "R. J. Grimes"	84	30
Replication	93	33
Order appointing examiner	94	33
Order to enlarge rule	95	34
Testimony	96	34
Order to dismiss as to Echols, Bramlett, and Davis, and hearing as to Harrell and Grimes	200	68
Decree	201	68
Order granted to appeal to United States Supreme Court	205	70
Bond on appeal	206	70
Clerk's certificate	208	71

a Fifth circuit court of the United States of America for the southern district of Georgia.

UNITED STATES OF AMERICA,
Southern District of Georgia, ss:

At a stated term of the circuit court of the United States of America for the fifth circuit and southern district of Georgia, begun and held according to law on the second Monday (being the tenth day) of April, A. D. 1871, at the city of Savannah, in said southern district of Georgia, present and presiding the Honorable Joseph P. Bradley, associate justice of the Supreme Court of the United States, assigned to said circuit, on the twenty-second day of May, A. D. 1871, during the said term, the following proceedings were had, to wit:

ELISHA H. BEALL, ASSIGNEE OF WILLIAM L. Jarrell, bankrupt, compl't,
vs.
DAVID B. HARRELL, R. J. GRIMES, AND OTHERS, def'd'ts.
} In equity.

1 Be it remembered that, heretofore, to wit, on the second day of September, A. D. 1869, came the said complainant, by his solicitors, Lyon, DeGraffenried and Irwin, and filed his bill of complaint against the said defendants as follows:

Bill of complaint.

In equity.

UNITED STATES OF AMERICA,
Southern District of Georgia:

To the judges of the fifth circuit court of the United States for the southern district of Georgia:

Elisha H. Beall, of the county of Stewart, and a citizen of the State of Georgia, residing in the southern district thereof, as the assignee of William L. Jarrell, bankrupt, brings this his bill against David B. Harrell, of the county of Wesbster, in the southern district of Georgia, and Alfred H. Echols, lately of the county of Stewart, in the southern district of Georgia, but now of parts unknown to your orator, R. J. Grimes, Andrew J. Bramlett, and James K. Davis, whose christian names are unknown to your orator, who reside in the county of Stewart, in said southern district of Georgia.

2 And thereupon your orator complains and says that, on the twenty-fifth day of February, in the year eighteen hundred and sixty-eight, the said William L. Jarrell, then of the county of Stewart, in the southern district of Georgia, upon his voluntary application was, by the Hon. Frank S. Hesseltine, one of the registers in bankruptcy for the State of Georgia, duly adjudged a bankrupt, under and by virtue of the authority of an act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867. And afterwards, to wit, on the 13th day of April, in the year eighteen hundred and sixty-eight, your orator was duly and legally appointed assignee of William L. Jarrell, bankrupt, accepted said appointment, was duly qualified, and entered upon the duties of that office.

Your orator shows unto your honors that, at the time of said adjudi-

cation, the said William L. Jarrell was largely indebted to a great number of different creditors, a list of whom was returned by said Jarrell, bankrupt, in the schedule thereof attached to his said application for the benefit of said act, is of file in the clerk's office of the district court of the United States for the southern district of Georgia, as also in
3 the said register's office; and the property returned by said bankrupt to be seen in his schedule thereof attached to his said application, likewise of file in said offices, and that came to possession of your orator, was and is wholly inadequate to the payment of the indebtedness of said bankrupt, nor did said schedule contain any of the property hereinafter set forth and described.

Your orator further showeth that, prior to the application of the said Jarrell for the benefit of said bankrupt act as aforesaid, to wit, on the first day of October, in the year eighteen hundred and sixty-seven, the said bankrupt was in the possession, use, and occupation, as of his own property, of the following described real estate in the county of Stewart, in said southern district of Georgia, all lying in the nineteenth district of said county, and known as lots numbers (131) one hundred and thirty-one, (132) one hundred and thirty-two, (133) one hundred and thirty-three, (156) one hundred and fifty-six, (157) one hundred and fifty-seven, (158) one hundred and fifty-eight, (165) one hundred and sixty-five, the west half of (164) one hundred and sixty-four, the north half of (126) one hundred and twenty-six, and seventy (70) acres off of the north
4 half of lot (125) one hundred and twenty-five, containing in all sixteen hundred and ninety (1,690) acres, and better known as the "John D. Snelling place." Also, of one other tract of land in the same district and county, the numbers of the particular lots composing the same being unknown to orator, but the whole tract containing (680) six hundred and eighty acres, and is known and described as the "William S. Perry place."

Your orator further showeth that the said bankrupt afterwards, to wit, on the twenty-ninth day of August, in the year eighteen hundred and sixty-seven, with the intent to hinder, delay, and defraud his said creditors, and acting in contemplation of solvency and with a view to prevent his said property from coming to his assignee in bankruptcy, and to prevent the same from being distributed under the bankrupt act, and to hinder, impair, impede, or delay the operation or effect of said act, and to evade its provisions, procured an execution which had issued from a judgment in the superior court of the county of Stewart, and State of Georgia, obtained and rendered at the October term,
5 1860, of said court, at the suit of Jeremiah Culpepper against Jubilee Smith and said William L. Jarrell, to be levied by H. G. Feagin, the sheriff of said county, on the tract of land known as the "John D. Snelling place," and one other tract of land as the property of him the said William L. Jarrell, which said levy was by the said sheriff advertised for sale on the first Tuesday in October, 1867; and, with like intent, the said bankrupt did, on the day and year last aforesaid, cause the said tract of land known as the "John D. Snelling place" to be sold by the sheriff, under the said execution and levy, when the same was bid off by the said A. H. Echols, who was at the time the clerk and agent of said bankrupt, at the nominal sum of seven hundred and twenty-five dollars, said tract of land being worth at the time the sum of ten thousand dollars, or other large sum, and would have brought at the time, under a fair sale made in good faith, that sum or some other large amount and much more than it was bid off at by the said Echols. And, with like intent to impair, hinder, impede, or delay the operation

and effect of the bankrupt act, and to evade its provisions, the
6 said William L. Jarrell and the said A. H. Echols then and there caused the said sheriff who made said fraudulent and pretended sale to execute a deed, conveying said lands to the said A. H. Echols, a copy of which said execution under which said pretended sale was made, with the several entries thereon, is hereto attached, marked Exhibit "A," to which orator prays the usual and all necessary leave of reference.

Orator further showeth unto your honors that, at and previous to said pretended sale, the said bankrupt was, and still is, indebted to one William A. Rawson, of said county of Stewart, in the sum of eleven thousand three hundred and seventeen dollars and seventy-eight cents, on a promissory note dated the thirteenth day of March, in the year eighteen hundred and sixty-six, and due on the first day of January thereafter; which said note was secured by mortgage-deed from the said William L. Jarrell to the said William A. Rawson, of the same date as the said promissory note to the said tract of land so sold at sheriff's sale, known as the "John D. Snelling place;" and the main object of the said Jarrell in causing the said land to be sold at sheriff's
7 sale by the sheriff, under the execution aforesaid, which was of older date, and had a prior lien to said mortgage-deed, was to defeat the said mortgage-lien and debt of the said William A. Rawson; and, in order to accomplish said fraudulent intent prior to and at said sale, he, the said Jarrell, used all artful and deceitful means and practices to deceive and mislead the said William A. Rawson, who was wholly ignorant, as orator is informed, that the judgment from which said execution issued was of older date than his said mortgage. To this end the said Jarrell, bankrupt, assured the said Rawson repeatedly, and up to the very moment when the said land was being bid off, that the land would not sell, and the said Rawson, relying on these statements, and believing them to be true, did not examine into the date of the execution and judgment under which the land was being sold, and paid but little attention to the matter, not dreaming that a sale would take place, or, that if it did, the interest of him, the said Rawson, would be prejudiced by such sale; but, on the day of sale, and while it was progressing, the said Rawson, then a resident of the town of
8 Lumpkin, in which the sale took place, discovered from his residence that a sale of the property was actually going on, and went to the sale.

Jarrell, in order to carry out his fraudulent purpose, and still further to delude, deceive, and defraud the said Rawson, on seeing him approach, went to him and requested him, the said Rawson, to announce that the property being sold was subject to his mortgage, which statement the said Rawson in obedience then and there made to the spectators and bidders at said sale, in the confident belief that said statement was true; whereas the said Jarrell knew the contrary thereof to be true, to wit, that said judgment, from which said execution issued, was of older date and superior in dignity to the mortgage of said Rawson upon said property, but took this course to throw said Rawson off his guard and prevent his bidding at said sale, or stopping the same by payment of amount due upon said execution, which purpose the deception practised by the said Jarrell most effectually accomplished, as said property was almost instantaneously, with the statement made by said Rawson, knocked off by the sheriff and crier at said sale to said A. H. Echols.

9 But for this fraudulent and deceitful conduct on the part of

said Jarrell, to which the said A. H. Echols was a party and a participant, the said Rawson would have paid off said execution, or have run the land up to its full value, so as to protect and secure himself on his mortgage-debt. A copy of the mortgage-deed from the said Jarrell to the said Dawson is hereto attached, marked Exhibit "B," to which orator prays the usual leave of reference.

Orator further showeth that, on the same day the "John D. Snelling place" was sold, another tract of land, consisting of lots numbers (135) one hundred and thirty-five, (154) one hundred and fifty-four, (167) one hundred and sixty-seven, in the (24) twenty-fourth district of said county of Stewart, and known as the "Richland place," was also sold, under the same levy and execution and at the same time, and with like intent on the part of said Jarrell, bankrupt, which was bid off by Willis L. Jarrell, the father of the said William, at the sum of ($1,085) one thousand and eighty-five dollars, much less than the real value of said land, which result was obtained by the divers deceitful and fraudulent acts and representations of the said William L.
10 Jarrell, to prejudice said sales while the same were being made. He proposed to the sheriff before the sale commenced, that if he would so manage the sale as that the property sold should only bring a small sum, he, the said Jarrell, would afterwards sell him, the said sheriff, a part of the land at a very low price, and much less than its real value. He also announced himself and got other pereons to do so for him, that the lands were subject to other, and superior liens, for in addition to what has already been stated as to Rawson and his mortgage being a superior lien on the Snelling place, to that of the judgm't and execution selling the same, he also announced and got other persons to announce, that the place in 24th district or "Richland place" was subject to another and large execution against the person from whom he had purchased that tract of land. He studiously and fraudulently concealed the fact, that the execution selling the Snelling place was older & superior in dignity to the Rawson mortgage, although he well knew and had the fact so falsely announced that the contrary thereof was the truth. He also well knew that the
11 bystanders were of the belief, that the Rawson mortgage was the oldest, and he induced Rawson so to believe, and so to announce, by telling him that such was the fact. After the sale was over, he, the said Jarrell superintended and hurried the settlement, and the execution of the deeds therefor by the sheriff, in which he was assisted by the attorney in law controlling the execution under which the property was sold. The money for the Richland place was paid over by Willis L. Jarrell, the father of said bankrupt, to the sheriff, and by the sheriff immediately handed to said attorney, and then immediately thereafter the said A. H. Echols, with this identical money, settled with the sheriff for his bid for the Snelling place, and, satisfying said fi. fa., the balance of the proceeds of said sale over what was necessary for that purpose was then paid to said Jarrell, bankrupt; and orator further showeth that, notwithstanding said sale of said lands, on said first Tuesday in October, 1867, the possession, use, and occupation of the said John D. Snelling place remained unchanged in the said William L. Jarrell, as if it were his own, as it in fact was, until the month of January, or February, in the year 1868, when he rented the whole of said John D.
12 Snelling place to R. J. Grimes and A. J. Bramlett, then and now of the county of Stewart, in said southern district of Georgia, for the year 1868, for which rent the said Grimes and Bramlett agreed to pay him, the said Jarrell, the sum of twenty-five dollars, and eight bales

of middling cotton, to weigh 500 pounds each. This agreement for rent of said place was made by the said Jarrell, bankrupt, in person, with the said Grimes and Bramlett, and for himself as his property, and in which the name of A. H. Echols was not mentioned, nor was he present, nor did he participate in the contract or agreement in any way whatever; but when the writing or obligation was drawn for said Grimes and Bramlett to sign and close up the transaction, he, the said Jarrell, for the first time, mentioned the name of Echols, and then only for the purpose of getting their consent to the insertion of the name of Echols as payee in said obligation instead of his own, nor did the said Jarrell even at that time pretend that the land was the property of said Echols, or that he had any interest in the same, the said Echols never having since the sale up to the present time had the actual possession of said lands. Your orator further showeth unto
13 your honors that with the same intent to defraud his creditors, and acting at the time in contemplation of insolvency and with a view to prevent his property from coming to his assignee in bankruptcy or from being distributed under the bankrupt act, and to hinder, impede, or impair and delay the operation and effect of said act, and to evade its provisions, on the seventh day of October, in the year, A. D. 1867, the said William L. Jarrell conveyed the other tract of land, hereinbefore described and in his possession, at the time known as the William S. Perry place, containing six hundred and eighty acres, by deed to the said A. H. Echols, for the pretended consideration of thirty-four hundred dollars, as recited or stated in said deed of conveyance, not one dollar of which sum was in truth paid by the said Echols to the said Jarrell, but the said deed was wholly without consideration and made with the sole intent and purpose, as was well known to the said Echols, as hereinbefore stated and charged, and so the same was received by him, the said Echols, notwithstanding such pretended sale and absolute conveyance. The said Jarrell also remained in the possession and use of the said last-named place from the time of said conveyance, as he had been previously thereto, until the fourth day of Jan-
14 uary, A. D. 1868, when he contracted and agreed with one J. K. Davis, then and now of the county of Stewart, in said southern district of Georgia, to rent him the said William S. Perry place, for the year 1868, and for said use of said place, the said Davis agreed to pay him, the said Jarrell, ten bales of middling cotton to weigh 500 lbs. to the bale, but when he took the obligation of said Davis in writing as to said contract of renting, he inserted therein the name of said A. H. Echols as the party to whom said cotton was to be delivered by the consent of said Davis, although during the previous negotiation the said Jarrell had rented the place as his own and had not mentioned the name of Echols as having any connection with or right to the said lands, nor had the said Echols ever had the actual possession of said lands, nor had he anything whatever to do with the renting or negotiations in respect thereto. Your orator further showeth that, at the time of said sales and previously thereto and after that time, the said A. H. Echols was a young man wholly without property, credit, or means of any kind and was a mere clerk in the employment of William L. Jarrell, bankrupt, and agent for him generally in the transaction of these and other business transactions of the said Jarrell; that in the procurement of the sale of said lands by the sheriff on the first Tuesday in October, A. D. 1867, and the subsequent conveyance
15 to Echols of the William S. Perry place, on the seventh day of October, A. D. 1867, the said William L. Jarrell, then being in

failing circumstances, was but concocting a scheme with the aid and assistance of the said Echols to defraud his creditors, and to hinder, delay, and impede the operations of the bankrupt act, and intended to prevent his property from coming to his assignee in bankruptcy; and in furtherance of the same fraudulent scheme and purpose, the said William L. Jarrell, either by himself or the said A. H. Echols, most generally by the latter, from the time said sales were made up to the time of filing his petition in bankruptcy, removed from the county of Stewart to distant places, all of his personal property consisting nearly the whole of his cotton crop, raised in the year A. D. 1867, his stock of mules and other personal property, and sold the same, and received the money therefor. In all of these transactions and sales he was actively aided and personally assisted by the said A. H. Echols, for that the said Echols, in furtherance of the scheme of the said William L. Jarrell, and to aid him in consum'ating the same, removed all the stock of the said Jarrell from his plantations in Stewart County, during the latter
16 part of the year 1867, and run the same secretly and clande'tinely out of the State of Georgia and into the State of Alabama, and there sold the same to divers persons whose names are unknown to orator, and received the pay therefor; and, after the said William L. Jarrell had thus carried out his fraudulent intention by the aid and co-operation of the said A. H. Echols, he applied for the benefit of the bankrupt law, was adjudged a bankrupt, and, under cover of such adjudication, fled from the State of Georgia, his creditors, and the courts, with all the money he had obtained by the said fraudulent sales of his personal effects as aforesaid, in company with the said A. H. Echols, and is now, as orator has recently been informed, in the county of Lincoln, and State of Kansas.

Orator further sheweth that the money paid by the said A. H. Echols to the sheriff of Stewart County, for the "John D Snelling place," was not the money of him, the said Echols, but was the money of him the said William L. Jarrell, and raised by him, out of his own means, for that purpose. That the said A. H. Echols was utterly without means of his own, and unable to raise any such sum of money, being dependent upon his salary as clerk of the said William L. Jarrell,
17 for his support and maintenance. Your orator further sheweth, that, after the flight of the said Jarrell and Echols from the State of Georgia as aforesaid, the said William L. Jarrell returned to the State of Georgia, and to the county of Stewart, or its neighborhood, as orator has been informed and believes, but kept himself so secreted and concealed on such occasions, that none but his particular friends and confederates could see or communicate with him. About the first day of October, in the year A. D. 1868, the said A. H. Echols also returned on a visit to the county of Stewart, and while in said county offered to sell the "John D. Snelling" & "William S. Perry" places to various persons, but could not get an offer for them, notwithstanding their great value as plantations for cultivation, for they were both known to be fertile and productive and in a condition for immediate and profitable culture. Although he proposed to sell them at merely nominal prices, far below the actual value, he could not get an offer for them, so notorious and wide-spread was the knowledge of the frauds practised by himself and the said Jarrell in the sale and conveyance thereof to himself; and
18 during the time he was thus offering said lands for sale as aforesaid, and endeavoring to make some disposition of the same, he, the said Echols, admitted that his titles to said lands was not good. After he had failed to make a sale of said lands and plantations, or either

of them, as aforesaid, the said Echols subsequently conveyed both of them, viz: The "John D. Snelling place," then of the actual value of ten thousand dollars, and now worth a much larger sum, containing, as aforesaid, 1,690 acres of land, and the "William S. Perry" place, of the value of five thousand dollars, containing 680 acres of land, by deed, to the defendant David B. Harrell, for the pretended consideration of four thousand dollars.

Orator further showeth that, if the said David B. Harrell did in fact pay to the said A. H. Echols the said sum of four thousand dollars, the consideration expressed in said deed for said lands, said sum was grossly and unconscionably inadequate to the actual value of said lands, and to the sum or price they would have brought or commanded from a bona-fide purchaser thereof, if purchased from a bona-fide holder and owner thereof; but your orator denies that said David B. Harrell did pay any such sum for said lands to the said Echols, and charges that he
19 took said conveyance from the said A. H. Echols for said lands, as the agent and legal adviser of and for the benefit of the said William L. Jarrell. Your orator further showeth that, at the time the said David B. Harrell took said conveyance from the said A. H. Echols, he had full knowledge of all the facts, as hereinbefore stated, that said Echols was not the bona-fide holder and owner of said lands. He well knew of the frauds hereinbefore stated & recited, which had been perpetrated by the said William L. Jarrell in the sale of said lands, and in the conveyance thereof to the said A. H. Echols. He knew that the said Echols was holding the titles to the same fraudulently as against the creditors of the said William L. Jarrell, and to defeat them from the condemnation thereof to their said debts, more particularly the before-mentioned mortgage of the said William A. Rawson, against the said William L. Jarrell, on the "John D. Snelling place," of the existence of which said mortgage-debt the said David B. Harrell had full and complete notice. At the time of taking said conveyance from the said Echols, the said David B. Harrell well knew the said Echols, and was acquainted with his pecuniary circumstances, and had known
20 him for some time previous thereto, and was well aware that said Echols was poor and without the means necessary to buy, and in good faith own and hold, this property; that he was but the agent and clerk of the said William L. Jarrell. He was well acquainted with the said W'm L. Jarrell and knew his property and means, and that he was and had been greatly embarrassed with debt. He knew that said Jarrell was the owner of said plantations; that he kept the possession of said lands after said sales, as hereinbefore stated, until the first day of January, 1868, and until he left the State. He knew that Jarrell used & controlled said lands after said sales, as his own. He knew that Jarrell rented one of the said places, the "Snelling place," to Grimes and Bamlett, for the year 1868, and took their obligation to deliver and pay the rents to Echols, and that this was a mere sham. He knew that Echols had never had the actual occupation and possession of said plantations, or either of them, and that Echols was not in the possession of either when he took the conveyance from him, and that he could not get the possession of them, up to the time said Jarrell took his departure from the country. Said David B. Harrell was well acquainted
21 with him and his business. He knew of the connection between the said Jarrell and the said Echols in the fraudulent transactions, as hereinbefore enumerated, and that the sale of the lands and the running of and disposal of the personal property of the said Jarrell, was done with a view to bankruptcy, and to evade the provisions of the

bankrupt law, and to prevent said property from coming to his assignee in bankruptcy. He, the said David B. Harrell, was one of the attorneys of the said Jarrell in the preparation of his petition and schedule, when his application was made, and hence was informed that said William L. Jarrell had been adjudicated a bankrupt. He well knew, at the time, that the sale of said lands, at sheriff's sale, on first Tuesday of October, 1867, and the conveyance of both the plantations to A. H. Echols was a fraud upon the creditors of said Jarrell, and was intended to defeat the object of, and to impair, hinder, impede, and delay the operation of, and to evade the provisions of the bankrupt act, and that the conveyance of said plantations to the said Echols was wholly without good and valuable consideration.

And orator further showeth that, after the sale by the sheriff of the John D. Snelling place, and after the conveyance by Jarrell
22 of the William S. Perry place to Echols, as hereinbefore stated, he (Jarrell) remained in possession of said places, treated and used the same as his own, offered the same for sale as his property, and rented the same for the year 1868, and with the full knowledge of the said Echols and the said David B. Harrell.

Orator further showeth that, after the first day of January, in the year A. D. 1868, and after said William L. Jarrell had rented the said John D. Snelling place to Grimes & Bramlett, and the William S. Perry place to J. K. Davis, he also rented another plantation in the county of Stewart, known as the Bill Snelling place, to one W. J. Tompkins, for the year 1868, for the consideration of five bales of cotton, to class middling and weigh 500 lbs. each; and, after taking the obligation of said W. J. Tompkins for said rent, he, the said William L. Jarrell, then transferred to the said David B. Harrell, without any consideration, and for the purpose, as aforesaid, of preventing the same from coming to the assignee of the said Jarrell in bankruptcy, and to defraud the creditors of the said William L. Jarrell, the said obligation of the said Grimes and Bramlett for the delivery of eight bales of cotton and twenty-five dollars in
23 money, of the value of eight hundred and twenty-five dollars, the obligation of the said J. K. Davis for the delivery of ten bales of cotton of the value of one thousand dollars, and the obligation of the said W. J. Tompkins for the delivery of five bales of cotton of the value of five hundred dollars, copies of which said obligations are hereto attached, marked Exhibits *to* C, D, & E, to which orator prays the usual leave of reference as often as may be necessary.

Your orator further showeth that the said Grimes and Bramlett are now in possession of the John D. Snelling place, and the said J. K. Davis is in possession of the William S. Perry place, and are using and occupying the same, and have been since the fourth day of January, in the year A. D. 1868, when they were placed in the possession thereof by the said William L. Jarrell, as aforesaid, under their agreement with him for the rent thereof; and your orator charges that the rent of the John D. Snelling place is worth the sum of one thousand dollars per annum, and especially is it worth that sum for the present year, 1869, and that the William S. Perry place is worth for rent the sum of one thousand dollars per annum, and is worth that sum for the present year, 1869.

Orator further sheweth that the said Grimes and Bram-
24 lett refuses to surrender to orator the possession of the John D. Snelling place, or to account to him for the rents, issues, and profits thereof, and that the said J. K. Davis refuses to deliver to your orator the possession of the William S. Perry place, or to account to him for the rents, issues, and profits thereof, although all of them have been requested so to do by your orator.

Your orator further sheweth unto your honors that the sale of the John D. Snelling place on the first Tuesday of October, A. D. 1867, by the sheriff of Stewart County, under the aforesaid execution, from Stewart to the purchaser thereof, A. H. Echols, and the deed made in pursuance of said sale from the sheriff aforesaid to the said A. H. Echols for said lands was procured by the said William L. Jarrell, and done to defeat the object of the bankrupt act, and prevent the said lands from being distributed under that act, and the subsequent conveyance by the said William L. Jarrell to the said A. H. Echols, under date of seventh of October, A. D. 1867, of the William S. Perry place, was made with like intent, and for the same object; that the said A. H. Echols at and in each of said transactions had full knowledge of the object and purpose of the said Jarrell, or at least had probable cause to believe
25 that the said William L. Jarrell was acting in contemplation of insolvency.

And your orator further sheweth that the transfer, as before stated, of the said obligations of the said Grimes and Bramlett, J. K. Davis and W. J. Tompkins, for rent as aforesaid, was made by the said *the said* William L. Jarrell to prevent the same from being distributed to the creditors of him, the said William L. Jarrell, under the bankrupt act, and to defeat the object of that act when so made to the said David B. Harrell, and that the said David B. Harrell, at the time said transaction took place, had reasonable cause to believe that said William L. Jarrell was acting in contemplation of insolvency.

Your orator further sheweth unto your honors that the aforesaid sheriff's sale and deed made in pursuance thereof to the said A. H. Echols, the deed from the said William L. Jarrell to A. H. Echols, of the 7th of October, A. D. 1867, conveying the said William S. Perry place; the deed from the said A. H. Echols to David B. Harrell, conveying both the John D. Snelling and the William S. Perry places, executed after the said William L. Jarrell was adjudged a bankrupt, and after the first day of October, 1868; and the transfer of the said rent-obligations of
26 the said Grimes and Bramlett, J. K. Davis and W. J. Tompkins, by the said William L. Jarrell to the said David B. Harrell, copies of which are to be seen in Exhibits C, D, and E, were and are, each and all, fraudulent and void, for the reasons and causes already hereinbefore stated and set forth; and the title to the said lands and the right to said obligations for rent have vested, by operation of law, in your orator as the assignee of the said William L. Jarrell, bankrupt.

And your orator further showeth that the said David B. Harrell is endeavoring to compel the said Grimes and Bramlett to deliver the possession of the "John D. Snelling place" to him under his said deed from Echols, and to account to him for the rents expressed in their said obligation for rent as aforesaid, and endeavoring to compel the said J. K. Davis to deliver the possession of the said "William S. Perry place" to him for the rent expressed in his said obligation for the year 1868, and also endeavoring to compel the said W. J. Tompkins to account to him for the rent of the "Bill Snelling place" for the year 1868, as expressed in his said obligation therefor. And your orator had well hoped that no disputes would have arisen touching the estate of the said Wil-
27 liam L. Jarrell, bankrupt, but that the said David B. Harrell would have surrendered to your orator, as assignee of the said bankrupt, all of said obligations for rent, and would have disclaimed all interest in the estate of said bankrupt under said fraudulent deed of conveyance from the said A. H. Echols, and that the said Grimes and Bramlett, the said J. K. Davis and the said W. J. Tompkins would have

paid to your orator, as assignee, the amount and value of their several and respective obligations for rent of said places for the year 1868, and that the said Grimes and Bramlett and the said J. K. Davis would have attorned to your orator, as their, landlord, and account to him for the rent, use, and occupation of the "John D. Snelling place" and the "William S. Perry place" for the present year, 1869, and agree to surrender said places to your orator, as assignee as aforesaid, at the end of said year, as in equity and good conscience they and each and every of them ought to have done, and all of which they and each of them have hitherto and still do refuse.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed for, and
28 may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such interrogatories hereinafter numbered and set forth as they and each of them may be particularly requested to answer unto, that is to say—

That the said J. K. Davis and the said R. J. Grimes may answer, and A. J. Bramlett may answer:

1st. Whether they are not in the possession, use, and occupation of the "John D. Snelling place" and the "William S. Perry place," in the county of Stewart?

2nd. Whether the said J. K. Davis did not rent said "William S. Perry place" for the year 1868, and receive the possession thereof from the said William S. Jarrell in person, as acting for himself, and whether the said R. J. Grimes, in connection with A. J. Bramlett, did not rent the "John D. Snelling place" for the year 1868, and receive the possession thereof from the said William L. Jarrell in person, and acting for himself alone, and whether they and each of them did not deliver to said Jarrell their obligations for the rent of said places, as here-
29 inbefore set forth, and whether the said Jarrell, at the time of said renting mentioned the name of A. H. Echols, or spoke of him as the owner of, or interested in said places in any way other than to ask you and each of you to let him take said obligations as payable to said Echols, instead of him, the said Jarrell?

3rd. Whether you and each of you are not still in possession of said plantations under and by virtue of said contracts of renting, or how?

And that the said David B. Harrell may answer:

1st. Whether he was not well acquainted with the said William L. Jarrell, and with his pecuniary circumstances, prior as well as subsequent to his application for the benefit of the bankrupt act; and whether he was not one of the attorneys of said Jarrell, and acted as such in the preparation and filing of his petition and schedule in bankruptcy?

2nd. Whether he did not also know that A. H. Echols was and had been for some time in the employ of said W'm L. Jarrell as clerk and agent, and that said Echols was poor and without means to purchase such valuable property as the "John D. Snelling" and the "Wil-
30 liam S. Perry" places, and that said A. H. Echols was dependant upon his salary as clerk for support and maintainance?

3rd. Whether he did not reside near to the said William L. Jarrell and the said A. H. Echols during the year A. D. 1867, and knew the relations they sustained to each other? Whether he did not know of said fraudulent sale of the "Snelling place" by the sheriff of Stewart County, and of the running off and sale of the personal effects of the said William L. Jarrell, as hereinbefore set forth and charged?

4th. Whether he did not receive from the said William L. Jarrell the obligations of Grimes and Bramlett, J. K. Davis and W. J. Tompkins, for rent for the year 1868, and at what time, and what consideration, if any, he paid therefor?

5th. Whether he does not now hold said obligations and the title to said lands conveyed to him by the said A. H. Echols for the benefit of the said William L. Jarrell or the said A. H. Echols, or both, or either?

6th. If he should answer that he holds the title to said lands and said obligations as his own and for his own benefit, then that he may
31 answer what consideration he paid or agreed to pay for the "William S. Perry place;" what consideration he paid or agreed to pay for the "John D. Snelling place;" and what consideration he paid or agreed to pay for said obligations for rent; and if said payments are not to be contingent upon his success in obtaining possession of said plantations and the collection of amounts due upon said obligations for rent?

7th. Whether the said "John D. Snelling place" was not worth ten thousand dollars at the time it was conveyed to him by the said A. H. Echols, and whether it is not worth that sum at the present time; and whether the "William S. Perry place" was not worth the sum of five thousand dollars at the time of its conveyance to him, and whether it is not worth that sum now?

8th. Whether it was not notorious in the neighborhood at the time, that the said William L. Jarrell and the said A. H. Echols were acting in concert to defeat the object of the bankrupt law and to prevent the property of the said Jarrell from coming to the hands of his assigns for distribution among his creditors?

9th. Whether, at the time said deed to him was executed, said
32 A. H. Echols was in the possession of said lands or any part thereof, or ever had been, or whether he, the said Harrell, has, since that time, obtained possession of said land or any part thereof. And to the end that the sheriff's sale of the "John D. Snelling place," on the first Tuesday in October, 1867, and the sheriff's deed made in pursuance thereof to the said A. H. Echols for said lands, the deed from the said William L. Jarrell, bankrupt, to the said A. H. Echols, of the date 7th October, 1867, conveying the "William S. Perry place," the deed from said A. H. Echols to the said David B. Harrell for the "John D. Snelling place" and the "William S. Perry place," and the transfer of the rent obligations of R. J. Grimes and A. J. Bramlett for the "John D. Snelling place," and J. K. Davis for the William S. Perry place, and of W. J. Tompkins for the "Bill Snelling place," transferred by the said William L. Jarrell to the said David B. Harrell, may each be declared absolutely null and void; the conveyance delivered up and cancelled, and the obligations for rent turned over to your orator as assignee as aforesaid; and that the said R. J. Grimes and A. J. Bramlett, and J. K. Davis may be compelled to perform and fulfil
33 their said agreements in said obligations contained to your orator, and to account to and with your orator for the rent of said places for the present year 1869; and that said lands may be sold for distribution under authority of the bankrupt act as part of the assets of the estate of the said William L. Jarrell, bankrupt. May it please your honors, by decree of this honorable court, to declare said sale by the sheriff of the "John D. Snelling place," on the first Tuesday in October, 1867, and the deed under the same by the sheriff of Stewart County to the said A. H. Echols, the pretended purchaser at said sale; the deed from W'm L. Jarrell to the said A. H. Echols, of the date of

7th of October 1867, for the said "William S. Perry place;" the deed from the said A. H. Echols to the said David B. Harrell of the rent obligations of the said R. J. Grimes and A. J. Bramlett, and of J. K. Davis for the said "John D. Snelling" and "William S. Perry places;" of W. J. Tompkins for the "Bill Snelling place" for the year 1868, absolutely null and void, and said obligations or agreements for rent be delivered to orator; that said conveyances be delivered up and
34 cancelled, and that said R. J. Grimes and A. J. Bramlett be decreed to perform their obligation according to the tenor and effect of their said agreement for the rent of the "John D. Snelling place," cultivated by them for the year 1868, by the payment of said rent to your orator; and that they account to your orator for the rent of said place up to the time of their delivery of the same to your orator; and that the said J. K. Davis perform his said obligation in his said agreement for the rent of the William S. Perry place for the year 1868, by the payment of said rent to your orator; and that he account to your orator for the rent of said place up to the time of its delivery by him to your orator. And may it please your honors to decree that said "John D. Snelling place" containing 1,690 acres, and the said "William S. Perry place," containing 680 acres, vest in orator as assignee, for sale and distribution as a part of the assets of the estate of the said William L. Jarrell, bankrupt.

And may it please your honors to grant unto your orator the most gracious writ of subpœna of the United States of America, to be directed to the said David B. Harrell, of the county of Webster; the
35 said A. H. Echols, whose whereabouts is at present to your orator unknown; the said J. K. Davis and R. J. Grimes, both of the county of Stewart, in the said southern district of Georgia, thereby commanding them and every of them, at a certain day and under a certain penalty to be therein specified, personally to be and appear before your honors in this honorable court, and then and there to answer all and singular the premises, and to stand to perform such order and decree therein as to your honors shall seem meet.

And may it please your honors to grant unto your orator such other and further relief as to your honors may seem meet, and your orators will ever pray, *and* &c.

LYON, DEGRAFFENRIED & IRVIN,
Compl't's Solicitors.

The defendants J. K. Davis, R. J. Grimes, and A. J. Bramlett, are required to answer the interrogatories numbered from 1 to 3, and the defendant David B. Harrell, is required to answer the interrogatories numbered from 1 to 9, inclusive.

Filed Sept 2, 1869.

LYON D GRAFFENRIED & IRVIN,
Compl't's Sol'rs.

36 "EXHIBIT A."

GEORGIA, *Stewart County*:

To all and singular the sheriff of said State, greeting:

We command you that of the goods and chattels, lands and tenements, of Jubilee Smith and W'm L. Jarrell, you cause to be made the sum of eight hundred and thirty-two dollars and sixty-four cents, principal, and the further sum of fifty three dollars and forty cents interest, up to

the 16th day of October, 1860; and also the further sum of thirteen dollars and ten cents for cost, with interest on the principal sum from the 16th day of October, 1860, which Jeremiah Culpepper, lately in our superior court of said county, recovered against Jubilee Smith and W'm L. Jarrell, for principal, interest, and costs, and that you have the said several sums of money before the judge of our said superior court on the 3rd Monday in April next, to render to the said plaintiff the principal, interest, and cost aforesaid, and have you then and there this writ.

Witness the Hon. J. F. Clarke, judge of our superior court, this the 5th day of December, 1863.

E. F. KIRKSEY, *Clerk.*

37 *Fi. fa. No.* 43. *April term*, 1861.

Stewart superior court.

For value received, I hereby transfer and assign to J. A. Fort the within fi. fa. and the judgment upon which it is founded. Said J. A. Fort is to have use and control of said fi. fa. and judgment for his own use and benefit, at his costs and charges without recourse to me.

his
JEREMIAH + CULPEPPER.
mark.

Test: G. E. THOMAS, Jr.,
W. H. HARRISON, *C. S. C.*
LUMPKIN, GA., *Jan'y* 16, 1867.

GEORGIA, *Stewart County:*

JEREMIAH CULPEPPER
vs.
JUBILLEE SMITH AND WILLIAM L. JARRELL.

Fi. fa. No. 43. *April term*, 1861.

Stewart superior court.

For value received, I hereby transfer and assign to James Fitzgerald the fi. fa. hereto attached, and the judgment upon which it is founded. Said James Fitzgerald is to have use and control of said fi. fa. and judgment on which it is founded for his own use and benefit; and when the same is collected said Fitzgerald is to pay out of said amount to James A. Fort one hundred and seven dollars and sixty-four cents and its pro-rata of interest, and I, the said James A. Fort, do hereby endorse
38 said fi. fa. to said James Fitzgerald to the amount of one thousand and fifty-four dollars and fifty cents.

This 22nd of April, 1867.

JA'S A. FORT.

Witness:
JAMES GRAHAH.
M. GILLIS.

GEORGIA, *Stewart County:*

I have this day levied the within fi. fa. on lots of land numbers (165) one hundred and sixty-five, (131) one hundred and thirty-one, (132) one hundred and thirty-two, (133) one hundred and thirty-three, (156) one

hundred and fifty-six, (157) one hundred and fifty-seven, (158) one hundred and fifty-eight; seventy-one acres off of north half of lot No. (124) one hundred and twenty-four, north half of lot No. (125) one hundred and twenty-five, west half of lot No. (164) one hundred and sixty-four, and north half of lot No. (126) one hundred and twenty-six, in the nineteenth district of said county of said State; and lots No. (154) one hundred and fifty-four, (167) one hundred and sixty-seven, and one hundred and thirty-five, (135,) in the twenty-fourth district of said county of said State, as the property of William L. Jarrell.

This the 29th day of August, 1867.

H. G. FEAGIN, *Sheriff.*

39 $14.10] Received of the within fi. fa. fourteen dollars and ten cents in full of all costs on the within.

Feb'y 27, 1867.

H. G. FEAGIN, *Sheriff.*

The land on which this fi. fa. was levied was sold this day at public outcry, when A. H. Echols purchased the sixteen hundred and fifty acres in the nineteenth district at seven hundred and twenty-five dollars, and the land levied on in twenty-fourth (24th) district was purchased W'm L. Jarrell for one thousand and eighty-five dollars.

Oct. 1st, 1867.

H. G. FEAGIN, *Sheriff.*

Received, of A. H. Echols, seven hundred and twenty-five dollars in full for the above land.

Oct. 1st, 1867.

H. G. FEAGIN, *Sheriff.*

Received, of W'm L. Jarrell, one thousand and eighty-five dollars in full for the purchase of the above land in the 24th district.

Oct. 1st, 1867.

H. G. FEAGIN, *Sheriff.*

Received, of H. G. Feagin, sheriff, one thousand three hundred and eight dollars, in full of principal and interest on the within fi. fa.

Oct. 1st, 1867.

M. GILLIS,
Att'y for James Fitzgerald, Transferee.

40 Deducted thirty-two dollars and sixty-two and a half cents for costs of levy, commissions on selling, and advertising, from the monies arising from said sales, and paid the remainder of four hundred and sixty-nine dollars and thirty-eight cents to the defendant W'm L. Jarrell.

Oct. 1st, 1867.

H. G. FEAGIN, *Sheriff.*

GEORGIA, *Stewart County:*

Received, of M. Gillis, att'y for James Fitzgerald, one hundred and seven dollars and sixty-four cents, Oct. 17, 1867, on this case.

JAMES A. FORT.

"EXHIBIT B."

GEORGIA, *Stewart County:*

This indenture, made this the 13th day of March, in the year of our Lord eighteen hundred and sixty, between William L. Jarrell, of the

county and State aforesaid, of the one part, and W'm A. Rawson, of Muscogee County, Georgia, of the other part, witnesseth that the said William L. Jarrell hath this day made and delivered to the said W'm A. Rawson his certain promissory note, subscribed with his hand and bearing even date with these presents, whereby the said William
41 L. Jarrell hath promised to pay the said W'm A. Rawson, or bearer, eleven thousand three hundred and seventeen dollars and seventy-eight cents, ($11,317.78,) on or before the first day of January next ensuing the date hereof, for value received: Now, for and in consideration of the sum of ten dollars, by the said William A. Rawson to the said W'm L. Jarrell in hand paid, the receipt whereof is hereby acknowledged, as well as for the better securing the payment of the said promissory notes, the said William L. Jarrell hath granted, bargained, and sold, and doth by these presents grant, bargain, and sell, unto the said W'm A. Rawson, his heirs and assigns, all that *trust* or parcel of land known as the John Snelling plantation, in the nineteenth district of, originally Lee, now Stewart, County, containing sixteen hundred and fifty acres, two of the lots being Nos. 56 & 57, in said district, the others not recollected. To have and to hold the said bargained premises unto the said W'm A. Rawson, his heirs and assigns, to his and to their own proper use, benefit, and behoof, forever. And the said William L. Jarrell, for himself, his heirs, executors, and administrators, the said bargained premises unto the said W'm A. Rawson, will warrant and forever defend against the claim of himself and his heirs, executors, and administrators,

shall, and do well and truly pay, or cause to
42 be paid unto the said W'm A. Rawson, his heirs and assigns, the aforementioned sum of eleven thousand three hundred and seventeen dollars and seventy-eight cents, on the day and time mentioned and appointed for the payment thereof in the said promissory note mentioned, with lawful interest for the same, according to the tenor of said note, then and from thenceforth, as well this presents, indenture, and the right of the property thereof conveyed as the said promissory note, shall cease, determine, and be void to all interests and purposes. In testimony whereof the said William L. Jarrell hath hereunto set his hand and affixed his seal the day and year above written.

W'M L. JARRELL. [L. S.]

Signed, sealed, and delivered, in presence of—
H. A. BOYNTON.
J. E. BLOUNT, *J. I. C.*

GEORGIA, *Stewart County:*

I, A. B. Harrison, clerk of the superior court of Stewart County, do hereby certify that the foregoing is a true extract from the records of said court.

Witness my official signature and seal of office this 14th of May, A. D. 1869.

A. B. HARRISON, *Clerk.*

43 EXHIBIT C.

By the 15th day of November, 1868, we promise to pay to A. H. Echols, or bearer, twenty-four dollars and eight bags of cotton, to class middlings, delivered in Cuthbert, Ga., each to weigh five hundred pounds, put up in good merchantable order, for the rent of the John D.

Snelling place, containing sixteen hundred and fifteen acres, for the year 1868, and all of the crop raised on said place to be bound for the payment of said rent.

R. J. GRIMES.
A. J. BRAMLETT.

EXHIBIT D.

By the 15th day of November, 1868, I promise to pay to A. H. Echols or bearer, ten bales of cotton, each to weigh five hundred pounds, to class middlings, delivered in Cuthbert, Ga., put in good merchantable order, for the rent of the (was) Perry place, containing 680 acres, for the year 1868; this also binds all the crop raised during said year for the payment of said rent. The place known where David Simpson lived during *during* year 1867.

Janu'y 14, 1868.

J. R. DAVIS.

44 EXHIBIT E.

By the 15th of November next I promise to pay W'm L. Jarrell, or bearer, five bales of cotton, each to weigh five hundred pounds, put up in good merchantable order, and delivered at E. McDonald's warehouse in Cuthbert, Ga., and to class middlings, for rent of land known as the Bill Snelling place, containing 480 acres. All of the crop made on the land is bound for said rent, and not to be moved or disposed of until the above rent is paid.

W. D. TOMPKINS.

FEB'Y 8, 1868.
[Stamp.]

Whereupon a subpœna issued returnable the first Monday of November next ensuing, to wit:

Subpœna.

UNITED STATES OF AMERICA,
Southern District of Georgia:

The President of the United States of America to David B. Harrell, Alfred H. Echols, R. J. Grimes, Andrew J. Bramlett, and James K. Davis, greeting:

For certain causes offered before the judges of the fifth circuit
45 court of the United States for the southern district of Georgia, in equity, you and each of you are hereby commanded and strictly enjoined, that, laying all other matters aside, and notwithstanding any other excuse, you personally be and appear at the clerk's office of the said court, in the city of Savannah, at rules to be had, on the first Monday of November next, to answer to those things which shall then and there be objected to in a bill for discovery, relief, and account, and to do further and receive what the said court shall have considered in this behalf, and this you may in no wise omit under penalty of five hundred dollars, and have here this writ.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this second day of September, in the year of our Lord one thousand eight hundred and sixty-nine.

SEAL.] JA'S McPHERSON, *Clk.*

MEMORANDUM.—The defendants are required to enter their appearance in the suit above stated, in the clerk's office, on or before the day at which this writ of subpœna is returnable; otherwise the bill may be taken pro confesso.

46 *Return.*

And afterwards, and on or before the return day of said subpœna, came the said marshal and returned the same with his return endorsed thereon in writing as follows:

I have this day served a copy of the within subpœna upon the within-named R. J. Grimes by leaving said copy at his residence in Stewart County, Georgia, Sept. 29, 1869.

Served a copy also on the within-named James K. Davis by leaving said copy at his residence, Stewart County, Georgia, Sept. 30, 1869.

Served a copy also on the within-named David B. Harrell by leaving said copy at his residence, Terrell County, Georgia, Oct. 1, 1869. The within-named Alfred H. Echols and Andrew J. Bramlett are not to be found in this district.

The return of—

JAMES COX,
U. S. Deputy Marshal.

Appearance.

And afterwards, to wit, at the November rules, eighteen hundred and sixty-nine, came the defendants, by their solicitors, and entered their appearance, as follows, to wit:

47 ELISHA H. BEALL, ASSIGNEE OF W'M L. Jarrell, bankrupt, *vs.* D. B. HARRELL AND R. J. GRIMES, DEF'D'TS. } Bill for discovery and relief.

November rules, 1869.

And now comes the said D. B. Harrell and R. J. Grimes, defendants in the above-stated case, by their attorneys and solicitors, Willis A. Hawkins and C. B. Wooten, and enter their appearance in the above-entitled cause.

W. A. HAWKINS,
C. B. WOOTEN, AND
HARTRIDGE & CHISHOLM,
Sol'rs for Def'd'ts.

Answer of David B. Harrell.

And afterwards, to wit, on the twenty-fifth day of November, A. D. 1869, came the said defendant, by his attorneys, Hawkins & Burke, and filed his answer to said bill of complaint as follows:

UNITED STATES OF AMERICA,
Southern District of Georgia:

The answer of David B. Harrell, defendant, to the bill of complaint of Elisha H. Beall, assignee, &c.

48 This defendant, now and at all times hereafter, saving and reserving to himself all benefits and advantage of exception

which can or may be had or taken to the many errors, uncertainties, and imperfections in said complainant's said bill of complaint contained, for answer thereto or to so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant answering, saith:

That it may be true, as stated in said complainant's bill of complaint, that, on the twenty-fifth day of February, eighteen hundred and sixty-eight, William L. Jarrell was, by the Hon. Frank S. Hesseltine, adjudged a bankrupt upon his voluntary application under and by virtue of an act to establish a uniform system of bankruptcy throughout the United States, approved March 2, 1867, and that, on the 13th day of April, in the year eighteen hundred and sixty-eight, the said complainant was duly appointed his assignee, and accepted said appointment, and was duly qualified and entered upon the duties of said office, but this defendant knows nothing thereof, except from rumor & charges in complainant's bill. And, further answering, he says that, at the time of said adjudication, the said Jarrell may have been indebted to various per-
49 sons, as charged in complainant's bill of complaint, but of such indebtedness knows nothing; and defendant knows nothing of what property was returned in said Jarrell's schedule, and what came into the possession of complainant, or whether the same was adequate or inadequate to the payment of said Jarrell's indebtedness. And this defendant is informed, and believes that said Jarrell was, on or about the first day of October, eighteen hundred and sixty-seven, in the possession of and use of, as of his own property, the real estate mentioned and described in complainant's bill of complaint as the "John D. Snelling place," and the "William S. Perry place," and "Richland place." This defendant admits that, on the twenty-ninth day of August, eighteen hundred and sixty-seven, the said described property was levied on by the sheriff of said county under and by virtue of a fieri facias issued from a judgment in the superior court of said county of Stewart and State of Georgia, obtained and rendered at the October term, 1860, of said court, in favor of Jeremiah Culpepper vs. Jubilee Smith, and the said William L. Jarrell, but this defendant does not know who procured the same to be done, or with what intent, only he is informed and be-
lieves that it was done at the instance of one James A. Fort
50 (who was the owner and transferee) of said fi. fa. through his attorney at law Malcolm Gillis, for the purpose of collecting the money due thereon; that said levy was duly advertised by the sheriff, and the place known as the John D. Snelling was, on the first Tuesday in October, eighteen hundred and sixty-seven, sold by him at public outcry, and bid off by A. H. Echols, he being the highest and best bidder, for the sum of seven hundred and twenty-five dollars, and that a deed in pursuance of said sale was executed by the sheriff to the said Echols, of which this defendant admits complainant's exhibit to be a true copy.

Of Jarrell's indebtedness to Rawson this defendant knows nothing, only he heard Rawson announce on the day of sale that the lands was sold under the incumbrance of a lien in his favor, but attached little or no importance to said announcement, as the said Rawson was bidding for the land at the sale. This defendant knows nothing of any interest the said Jarrell had in connection with said Rawson as to the sale, or whether he used any means or practices, artful, deceitful, or otherwise, to deceive or mislead him, the said Rawson, or whether the said Rawson was ignorant or informed as to whether the judgment under
51 which the land was sold was younger or older than his lien; but, believing from his knowledge of the business habits and charac-

ter of the said Rawson that he was not ignorant of his interests where they were so much involved.

This defendant knows nothing of any assurances given by Jarrell to Rawson or any other person, that said lands would not sell, or what the said Rawson believed, or what attention he paid to the same, only as above stated, or when he discovered or from whence that said sale was going on, or whether Jarrell met him, or whether he requested him to announce that the property was subject to his mortgage, or whether said statement was made by Rawson in the belief that it was true, or whether it was done to prevent Rawson from bidding or stopping the same by paying the fi. fa. This defendant only knows by his being present that the land was put up and sold by the sheriff to the highest bidder; that it was bid for by several persons, Rawson in the number; that it was knocked off to A. H. Echols, and a deed made by the sheriff to him. That this defendant not being interested in the least paid little attention thereto at the time. And this defendant admits that, on the same day the place known at the "Richland place," and which is particularly described in complainant's bill of complaint, was sold, and he is informed and
52 believes that the same was purchased by Willis S. Jarrell, but does not know how much he paid for the same. The land brought about as much as lands did generally in the county where they lay at the time, it being a season of great scarcity of money and general depression and public apprehension. This defendant knew of no lands sold at sheriff's sale about that time bringing a larger sum.

This defendant knew nothing of the said Jarrell using any means or practices, deceitful or otherwise, to bring about that result, or whether he made any propositions to the sheriff before the sale commenced, or at any other time, that if he would so manage the sale as that the property should bring only a small sum, he, the said Jarrell, would sell him a portion thereof at a low price, and much less than its real value, but believes from his knowledge of the character, standing, and probity of the said sheriff, Henry G. Feagin, that if such a proposition had been made to him by Jarrell, or any other person, he would have indignantly spurned both the proposition and the man who made it. Defendant does not know whether Jarrell announced himself or got other persons to announce that the lands were subject to any other superior liens, for and in addition to what had been stated as to Rawson's lien, or whether he
53 concealed the fact that the execution selling the land was older and superior in dignity to the Rawson mortgage, but states in this connection that the fi. fa. was an office paper, subject to inspection by any one, and any person interested could in a few minutes have satisfied themselves of the dates thereof. This defendant does not know what was the belief of the bystanders. Influence of Rawson's statement on bidders respondent believes was but little, as he himself was a bidder on the land. Defendant does not know whether Jarrell superintended and hurried the settlement after the sale was over, and the execution of the deeds by the sheriff, or by whom he was assisted, or when and by whom the money for the "Richland place" was paid over, or what was done therewith, only from the entries on the execution, or whether Echols with this identical money settled his bid for the Snelling place, or what was done with the balance of the money, only from the entries on the execution. This defendant does not know whether the John D. Snelling place after the sale remained in possession, use, or control of said Jarrell, as if it were his own, up to the month of January or February, 1867. He was informed by R. J. Grimes, and believes, that the same was rented to him and one A. J. Bramlett, by William L. Jarrell,

54 representing that he was the agent of A. H. Echols, and that they gave their obligations in pursuance thereof & for twenty-five dollars and eight bales of middling cotton, to weigh 500 lbs. each, and which obligation afterwards and for a valuable consideration, and before the same was due, came into the hands of this defendant.

This defendant does not know who was present or what was said at the time of the renting, only from the obligation and statement that Grimes afterwards made to him.

This defendant is informed and believes and admits it to be true that, on the seventh day of October, 1867, the said Jarrell sold and conveyed to the said A. H. Echols, the other lots of land particularly described in complainant's bill of complaint as the "William S. Perry place," containing six hundred and eighty acres. This defendant does not know anything of the consideration paid therefor by the said A. H. Echols, only from the deed made by said Jarrell, and the statements of said Echols made to this defendant, that it was a fair and bona-fide sale, and for the consideration expressed therein, or what interest and purpose the same was made for, or whether the said Jarrell remained in possession

55 of and use of the last-named place as of the first, until the fourth day of January, but he was informed and believes that on said day the said Jarrell, as agent for said A. H. Echols, rented said land to one J. K. Davis, then and now of said county, for the year 1868, for which the said J. K. Davis obligated himself to pay, by the 15th of November then next, seven bales of middling cotton to weigh 500 lbs. each. Said obligation was made to said A. H. Echols or bearer; and, afterwards, before the same was due, and for a valuable consideration, came into the hands of defendant as his own property; that said sum still remains due and unpaid, after every exertion by defendant to collect the same; and defendant is informed and believes that the same is utterly worthless by reason of the insolvency of the said J. K. Davis. This defendant does not know who was present when the negotiations was made, or what was said or done by the parties. He knows that he bought the obligation from A. H. Echols before the same was due, and paid a valuable consideration therefor. This defendant, further answering, says that he had very little acquaintance with A. H. Echols, and was not at all ac-

56 quainted with his pecuniary standing. He does not know his age: knows that he was doing business for Jarrell in his store; may have been a clerk, or had an interest—defendant does not know.

Defendant did not know that Jarrell, on the first Tuesday in October, 1867, when John D. Snelling place was sold, and on the 7th of October, when the conveyance of the "William S. Perry place" was made by Jarrell to Echols, that Jarrell was in failing circumstances. He afterwards heard the same and supposed that it was true.

Defendant does not know that it was a concocted scheme to defraud his creditors and prevent his property from coming into the hands of his creditors; does not know, if it was such, whether said A. H. Echols or any other person assisted or aided in it or knew of the same.

This defendant knows nothing of the said William L. Jarrell filing his petition in bankruptcy, only as he has heard it rumored; knows that Jarrell removed from said county some time in the spring or summer of 1867. Does not know where he removed to or where he is at present. Knows that A. H. Echols removed some time in the summer of 1867.

This defendant does not know of the removal of the said Jarrell or Echols of any of his personal property, or of his cotton crop

57 raised in 1867, his stock of mules and other personal property;

or whether the same was sold, or to whom sold, or what they were sold for, or who received the money, or whether any money was received, or whether A. H. Echols assisted therein, or whether, to assist the said Jarrell, the said Echols removed the stock from the plantation in Stewart County during the latter part of the year 1867, or at any other time, clandestinely or openly, to the State of Alabama or elsewhere, or whether he sold the same, or to whom, or whether he received pay, or how much.

This defendant does not know that the said Jarrell, after he had carried out his schemes, by the aid of the said Echols, he applied for the benefit of the bankrupt law, was adjudged a bankrupt, and, under cover of said adjudication, fled from the State, the court, and his creditors with all the money he had received from the sales of his personal effects or from any other source; but defendant knows that he did not, in company with A. H. Echols, for the said A. H. Echols did not remove till long after the said Jarrell had left.

This defendant does not know that the money paid by said A. H. Echols to the sheriff of Stewart County for the John D. Snelling place
58 was not the money of said Echols, or that it was the money of Jarrell, raised by him out of his means for that purpose, or any other way, for any other purpose.

This defendant does not know that said A. H. Echols was without means of his own, or that he was unable to raise any such sum of money; but, on the contrary, says that he believes that he was so able and did raise the necessary money for that purpose.

This defendant does not know whether the said Jarrell ever returned to the county of Stewart or State of Georgia after his flight, as alleged in complainant's bill of complaint; has never seen him since his first removal or had any communication or intercourse with him, either directly or indirectly.

This defendant says that A. H. Echols did return, for this defendant saw him about the last of October, 1868. This defendant does not know of his offering to sell the John D. Snelling place and the William S. Perry place to any person or persons, or what he got offered for them, or whether he offered them at mere nominal prices, or below their value, or whether the frauds practiced by himself and said Jarrell was wide-spread and notorious in said conveyances, or that the
59 said A. H. Echols admitted that the titles to said lands was not good.

This defendant only knows and admits that the said A. H. Echols, on the 26th day of October, 1868, sold and conveyed the place fully described in complainant's bill, as the John D. Snelling place, and the place fully described in complainant's bill as the William S. Perry place, to this defendant, and duly executed deeds therefor, copies of which are attached to this answer, marked A & B, which defendant prays may be taken as part of this answer with usual leave of reference; that said land was valued, in the trade between the said A. H. Echols and this defendant, at one and a half dollars per acre, and this defendant paid therefor this sum; that at the time of said sale said sum was a fair and adequate price for the same; that said places were dreadfully out of repair, fences down, rails decayed, and defendant had heard Henry G. Feagin, a few months before, in a judicial proceeding before the Hon. David A. Vason, judge of the S. W. circuit, said that one dollar per acre was a fair valuation for said lands, and was influenced in his purchase thereof by the judgment of said Feagin.

This defendant utterly and emphatically denies that he took
60 said conveyance from A. H. Echols, as the agent or legal adviser of or for the benefit of said W'm L. Jarrell or any other person; that he purchased the same and paid therefor bona fide for his own use, benefit, and behoof, with no knowledge or notice of any facts going to impugn the title thereof, between said A. H. Echols and said W'm L. Jarrell or any other person or persons whatever. This defendant distinctly denies that he had any knowledge that said A. H. Echols was not the true and bona-fide owner of said lands; that if he had known of such facts he would not have purchased the same or paid his money therefor.

He utterly and emphatically denies that he knew of the frauds set forth in complainant's bill of complaint, as practiced by the said Jarrell in the sale of said lands, or in the conveyance to said Echols, or in any other way or method. He denies that he knew or had any notice that said A. H. Echols was holding the titles to said lands fraudulently against the creditors of said W. L. Jarrell and to defeat them from the condemnation thereof to their said debts, or especially to the debt of said Rawson; that he had no notice of any mortgage held by
61 Rawson against said Jarrell, only by the announcement made by Rawson on the day of sale; knew nothing of the character or amount of the lien, or mortgage.

That, at the time defendant took the conveyance from Echols and paid him therefor, he was only casually acquainted with said A. H. Echols, and was not acquainted much with his pecuniary resources, but supposed, from his buying and owning the property, that he had means sufficient for that purpose; that he was well acquainted, personally, with W. L. Jarrell, but knew little of his property or means, only that he was in possession of a large quantity of land, owning large plantations, and carrying on an extensive business in planting and merchandising. This defendant does not know that said Jarrell was embarressed previous to said sales; does not know that he kept possession of said lands after said sale. This defendant does not know that said Jarrell used and controlled said lands after the sale, but is informed & believes that he did not, only as agent for said A. H. Echols, in renting the same to Grimes and Bramlett, and to J. K. Davis. He did not know this until he was so informed by R. J. Grimes, long
62 after this defendant had purchased from said A. H. Echols the obligations of said Grimes and Bramlett and J. K. Davis for said rent. This defendant denies that he knew that said A. H. Echols never had the actual occupation or possession of said lands; but, on the contrary, that he did so have the actual occupation and possession of said John D. Snelling, upon one occasion when this defendant called to see him on business, and informed this defendant that he so used and occupied the W. S. Perry place also.

This defendant, answering, says that, at the time he took the conveyances from said A. H. Echols of said places, the said A. H. Echols was in possession of the same by his tenants, R. J. Grimes and J. K. Davis. Defendant admits that he was well acquainted personally with said Jarrell, but knew nothing of his business; did not know of any connection between said Jarrell and said A. H. Echols in the fraudulent transactions as hereinbefore stated, or any other transactions, or that the sale of the lands and the running off and disposal of the personal property of said Jarrell, if there was any running off thereof, was done with a view to bankruptcy, and to evade the provisions of the bankrupt laws, and to prevent the property from coming into the
63 hands of his assignee in bankruptcy. This defendant denies that

he was one of the att'ys of said Jarrell in the preparation of his petition and schedule when his application was made; that he knew nothing of said petition and schedule and adjudication, nor does he now know anything thereof except rumors and charges in complainant's bill. He had no connection or communication with the said Jarrell, directly or indirectly, or in any other way in that regard, either as attorney, counsellor, adviser, friend, or outsider, and had no notice thereof except as above stated. This defendant distinctly and emphatically denies that he knew at the time, has known since, or now knows that said sale of the "John D. Snelling place," on the 1st Tuesday in October, 1867, and the conveyance made in pursuance was a fraud upon the creditors of said Jarrell, and intended to defeat the object of, and to impair, delay, hinder, and impede the operation of, and evade the provisions of the bankrupt act, or that the conveyance of said plantation to said A. H. Echols was wholly without consideration, good and valuable, and therefore void; but, on the contrary, believes that said sale was bona fide, upon valuable consideration paid to the sheriff selling said lands, who, defendant believes, would not have prostituted his office to fraud of such nature, as charged in complainant's bill. And the
64 money so paid to the sheriff went to the satisfaction of the execution under which said land was sold, and thereefore to the benefit of one at least of the creditors of said Jarrell.

This defendant distinctly denies, as he has several times in his said answer, that he knew or had any notice that the said Jarrell remained in possession of the places after the sales, or that he offered them for sale as his property with the knowledge of said A. H. Echols or any other person. This defendant does not know of the said Jarrell's renting, after the first day of January, 1868, another place known as the Bill Snelling place, to one W. J. Tompkins, only from information, but believes that the same is true. Said rent was for five bales of middlings, weighing five hundred pounds, and the said Tompkins made his obligation to said Jarrell or bearer, on the 8th day of February, 1868, to become due on the 15th November, 1868, which said obligation afterwards, by due course of trade, and for a valuable consideration, came into the hands of this defendant by purchase, from one A. H. Echols. This defendant knows nothing of how it came into the said A. H. Echols' hands, only he stated to this defendant that he had purchased the same from the said Jarrell; that he never got the obligation from
65 Jarrell or had any communication with Jarrell in reference thereto; that he did not come to the possession of said obligation for the purpose of preventing the same from coming into the hands of Jarrell's assignee, or to defraud his creditors, but he purchased the said Tompkins' obligation worth, as complainants allege, five hundred dollars; and the obligation of said R. J. Grimes and A. J. Bramlett for twenty-five dollars and eight bales of cotton; and the obligation of said J. K. Davis for seven (and not ten) bales of cotton, which was and is utterly worthless, by reason of the insolvency of the said Davis, from the said A. H. Echols, before they became due, and paid to said A. H. Echols therefor the sum of seven hundred and fifty dollars, which was a fair price for the same, without any notice of any defect, fraud, or any other act of the said A. H. Echols or the said W. L. Jarrell going to impugn the bona fides of any of said obligations, or either of them.

And your defendant says that R. J. Grimes is now in the possession of said John D. Snelling place as the tenant of this defendant, and has paid the rent for 1868 to this defendant, as per his obligation which came to this defendant, and has rented and given his obligation
66 to defendant for the same rent for this year, 1869.

That defendant is in possession of the "W. S. Perry place" by his tenants, W. J. Tompkins, who has obligated to pay defendant five bales of cotton for the rent this year, 1869. That this defendant was never placed in possession of the places by W. L. Jarrell, or any other acting for him; that he went into possession under, and by virtue of his title from A. H. Echols; that the rent is worth the sum paid by the parties for the year 1868, and is worth the amount promised this year.

That defendant admits that Grimes and Bramlett refused to deliver the John D. Snelling place, and Davis the W. S. Perry place to the assignees of Jarrell, as in truth they ought to have done, but delivered the possession severally & respectively to this defendant, who was, and is the owner thereof. They also refused to pay the receipts to said assignee, but paid the same to defendant, with the exception of the said J. K. Davis, for the Perry place. And this defendant, further answering, says that if the deed made in pursuance of the sale from the sheriff to said A. H. Echols for said lands was procured by said Jarrell to defeat the object of the bankrupt act, and to prevent said lands
67 from being distributed under that act, and the subsequent conveyance by the said W. L. Jarrell to the said A. H. Echols, under date of the 7th of October, 1867, of the "W'm S. Perry place, was made with like intent, and for the same object, and that said A. H. Echols had, at each transaction, *had* full, or any knowledge thereof, or probable cause to believe that said W. L. Jarrell was acting in contemplation of insolvency, this defendant is ignorant wholly and entirely of it; but, on the contrary, believes from the statement and representations of the said A. H. Echols to him, defendant, that it was not the case.

And this defendant, answering, says that, if the sheriff's sale and deed made in pursuance thereof to the said A. H. Echols; the deed from the said Jarrell to said A. H. Echols of 7th of Oct., 1867, conveying the said W. S. Perry place, and the transfer of the obligation of said Tompkins by Jarrell to said A. H. Echols were effected by any fraudulent act of either of said parties, this defendant is wholly ignorant thereof.

That the deeds made by the said Echols to this defendant to both of said places, was made in good faith to convey the titles thereto
68 to this defendant for his own use, benefit, and behoof, without any understanding outside of said conveyances; that respondent paid therefor the amount above-named without any notice of anything affecting the titles.

That he went into the possession thereof, and still holds the same as his own right and property.

That the obligations of R. J. Grimes and A. J. Bramlett, and of W. J. Tompkins, and of J. K. Davis, came legally into the possession of this respondent by due course of trade, and before the same was due, for the consideration above expressed, and without any notice of any claim, real or pretended, of any other person.

And this respondent further*ing* answering says:

1st interrogatory. That he was well acquainted with said W. L. Jarrell personally, but not with his pecuniary circumstances at any time; that this respondent was not one of the attorneys of said Jarrell, nor acted as such in the preparation and filing of his petition and schedule in bankruptcy.

2nd. This defendant, answering, says that he knew that said A. H. Echols was, about that time, and had been for some time, in the employ as clerk, or interested with said W. L. Jarrell in mercantile busi-
69 ness—did not know that said Echols was poor and without means to purchase such valuable property as the John D. Snelling place,

and the William S. Perry place, or that said A. H. Echols was dependant upon his salary as clerk, for his support and maintenance.

3rd. That this respondent did not reside near to the said W. L. Jarrell and A. H. Echols during the year 1867; on the contrary, he resided some 17 or 18 miles from them and in a different county; did not know of the relationship they sustained to each other, whether as clerk or as one interested in merchandising, but believes the former; did not know of any fraudulent sale of the Snelling place by the sheriff of Stewart County, and of the running off and sale of the personal effects of the said W. L. Jarrell, as set forth and charged in compl'ts bill; but, on the contrary, he believes that said sheriff's sale was bona fide, for the reason that, from the probity and integrity of said sheriff, he would not have connived at any of the afore-charged fraudulent acts, and also that the money for which said land sold was duly paid by said sheriff to the holder of the execution under which it was sold.

70 4th. This respondent, answering, says that he did not receive from the said W. L. Jarrell the obligations of R. J. Grimes and A. J. Bramlett, and of J. K. Davis, and of W. J. Tompkins, for the rent of 1868, of any of the said places; but, on the contrary, positively and distinctly states that he purchased each and every of said obligations from A. H. Echols before they became due, and for the sum of seven hundred and fifty dollars, and paid the same in good faith, without any notice of any defect of titles—the said A. H. Echols to send papers; that he never spoke to Jarrell on the subject, or knew he had any interest therein.

5th. This respondent, answering, says that he distinctly and unequivocally denies that he holds said obligations or the titles to said lands conveyed by said A. H. Echols to him, for the benefit of the said W. L. Jarrell or A. H. Echols, or either of them, or for any other person except this respondent.

6th. This respondent says that he holds the titles to said lands and said obligations as his own property and for his own use and benefit; that he paid for the same thirty-four hundred and sixty dollars. The W. S. Perry place was estimated by A. H. Echols and myself

71 in the trade at one thousand dollars, and the John D. Snelling place at twenty-four hundred and sixty dollars; which said amounts was paid by this respondent to said A. H. Echols, in cash, at the time of the execution of the said deeds by said A. H. Echols; that respondent paid to said Echols for the obligations before mentioned, for rent, the sum of seven hundred and fifty dollars, in cash, at the time of the transfer to him by said Echols of said obligations; that neither of said payments were to be contingent, or upon respondent's success in obtaining possession of said plantations, or the collection of amount due upon said obligations for rent, nor upon any other contingency; but trade was made absolutely, the money paid unconditionally—this respondent having full faith in getting a good title to said lands and obligations for rent, and not having notice or knowledge of any circumstance going to impugn the good faith of the transaction.

7th. This defendant denies that said John D. Snelling place is worth now ten thousand dollars, or near such sum, as the most this respondent

72 has been offered for the same was four thousand dollars, and deponent does not think that the place could be sold for over that sum now, or that it *is* worth over five thousand at the time said Echols conveyed it to respondent. It was not worth over two dollars per acre. The said W. S. Perry place is not worth five thousand dollars, or any

such large sum. Respondent has been lately offered thirty bales of cotton in one and two years' time for said place, which he estimates at about two thousand dollars cash. Respondent thinks the place is worth now about two thousand five hundred dollars; was worth at the time said A. H. Echols conveyed it to respondent about two dollars per acre.

8th. Respondent does not know whether it was or was not notorious in the neighborhood at the time that said A. H. Echols and said W'm L. Jarrell were acting in concert to defeat the object of the bankrupt law, and to prevent the property of the said W. L. Jarrell from coming to the hands of his assignee for distribution among his creditors. If such was the fact, respondent does not know it, he residing in a different county and some sixteen or eighteen miles from the places of
73 their residence.

9th. Respondent says that he does not know whether said A. H. Echols was in possession of said lands at the time he made the deed to respondent; but, from information, believes that he was, as he represented to respondent that he was, and had in his possession the obligations given by R. J. Grimes and A. J. Bramlett and J. K. Davis, for the rent of the said places for the year 1868. This respondent has, since that time, to wit, the spring of this year, 1869, obtained possession of said lands, and collected the rents of the same for 1868, and rented them for the present year, 1869; that respondent is now, by his tenants, to wit, R. J. Grimes, of the John D. Snelling place, and W. J. Tompkins, of the W. S. Perry place, in the full and peac'able possessions of said lands.

And this defendant denies any and all manner of unlawful combination and confederation wherewith he is charged, without this that there is any other matter, cause, or thing in compl't's bill of compl't contained material or necessary for this defendant to make answer thereto, and not herein and hereby well and sufficiently answered, confessed,
74 traversed, and avoided or denied, is true to the knowledge and belief of this defendant. All of which matters and things this defendant is willing and ready to aver, maintain, and prove as this honorable court shall direct, and prays to be hence dismissed with his reasonable costs and charges in this behalf, most wrongfully sustained.

W. A. HAWKINS,
Respondents' Solicitor.

This defendant, further answering, says that he has attached to this answer the original deed from the sheriff of Stewart County, Henry G. Feagin to A. H. Echols, of the John D. Snelling place, and the original deed of W. L. Jarrell to A. H. Echols, of the W. S. Perry place, made on 7th of Oct., 1867.

W. A. HAWKINS,
Resp. Sol'r.

Deed of H. G. Feagin, sheriff, to A. H. Echols.

GEORGIA, *Stewart County:*

This indenture, made this the first day of October, 1867, between Henry G. Feagin, sheriff of said county, and A. H. Echols, also
75 of said county, witnesseth that, whereas the said Feagin, sheriff, as aforesaid, did, on the 27th day of August last, levy upon the following land: Lots No. 165, 131, 132, 133, 158, 157, 156, and seventy-one acres off of the north half of lot No. 124, north half of lot No. 125, west half of lot No. 164, north half of lot No. 126, in the 19th district of said county, as the property of W. L. Jarrell, to satisfy an execution issued

from Stewart superior court, in favor of Jeremiah Culpepper, plaintiff, and James Fitzgerald, transferee, vs. Jubilee Smith and W'm L. Jarrell; and after advertising the same in the Cuthbert Appeal for the space of thirty days, did, on the first Tuesday in October inst., 1867, expose to sale said land between the legal hours of sale, and the said A. H. Echols having been the highest bidder for the same, and it being knocked off to him, as the purchaser, at the sum of seven hundred twenty-five dollars:

Now, the said Feagin, sheriff, as aforesaid, in consideration of the sum of seven hundred and twenty-five dollars, to him in hand paid, at and before the signing and delivery of these presents, has granted,
76 bargained, sold, aliened, and conveyed, and by these presents does convey unto the said A. H. Echols, his heirs and assigns, the aforesaid lots and parts of lots of land lying in the 19th district, containing sixteen hundred and fifty acres, more or less:

To have and to hold the said lots and parts of lots, to the said Echols, his heirs and assigns, in as full a manner as the said William L. Jarrell could do.

In testimony whereof the said Henry G. Feagin has hereto set his hand and seal this the first day of October, 1867.

H. G. FEAGIN, [L. S.]
Sheriff.

Signed, sealed, & delivered in presence of—

W. F. WILSON.
M. GILLIS, *J. C. C.*
[Stamps.]

(Endorsed:)

GEORGIA, *Stewart County:*

The within indenture, recorded in book W, pages 456 & 457, in the clerk's office of Stewart superior court, this 3rd day of Dec., 1867.

W. H. HARRISON, *Clerk.*

77 *Deed of W'm L. Jarrell to A. H. Echols.*

STATE OF GEORGIA,
Stewart County:

This indenture, made this the 7th day of October, in the year eighteen hundred and sixty-seven, between W'm L. Jarrell, of said county, and A. H. Echols, also of said county, witnesseth, that for and in consideration of the sum of three thousand four hundred dollars, to me in hand paid by said A. H. Echols, I do hereby grant, bargain, sell, deliver, and convey unto said A. H. Echols all that parcel of land known as the W. S. Perry place, upon which he lived in the year eighteen hundred and sixty-five, containing six hundred and eighty (680) acres, more or less, and bounded as follows: On the east by the John D. Snelling and J. C. Byrd places; on the north by L. A. Lowry & R. D. Hill; on the west by the Cassander Parker dam in the John G. Perry lands; on the south by the Redding Trammell and John D. Snelling places:

To have and to hold unto him, the said A. H. Echols, his heirs, and assigns all that parcel of land, together with all the rights, members, and appurtenances thereto belonging, forever, in fee-simple, and the

right and title to such parcel of land unto the said A. H. Echols,
78 his heirs and assigns, I do hereby warrant, and will forever defend against the claims of all persons whatsoever.

In testimony whereof I have hereunto set my hand and seal the day and year first before written.

W'M L. JARRELL. [L. S.]

Signed, sealed, & delivered in presence of—
JNO. C. BYRD.
A. C. BYRD.

[Stamps.]

STATE OF GEORGIA,
Stewart County:

Before me, Z. S. Parker, a justice of the peace in and for said county, came in person John C. Byrd, who, after being duly sworn, deposes and says that he was a subscribing witness to the within deed of conveyance; that his signature as such witness is genuine; and that he saw the maker of said deed, W. L. Jarrell, sign & seal the same, and that the other witness, Andrew C. Byrd, also signed the attestation in his presence and in the presence of each other, upon the day on which the deed bears date.

JNO. C. BYRD.

Sworn to & subscribed before me this 10th day of Oct., 1869.
Z. S. PARKER, *J. P.*

This indenture recorded in book W, page 460, in the clerk's office of Stewart superior court this the 3rd day of December, 1867.
W. H. HARRISON, *Clerk.*

79 *Deed to David B. Harrell.*

STATE OF GEORGIA,
Stewart County:

This indenture, made the 26th day of October, A. D. eighteen hundred and sixty-eight, between A. H. Echols and D. B. Harrell, witnesseth that the said A. H. Echols, for and in consideration of thirty-four hundred and sixty dollars to him in hand paid, hath sold, bargained, and conveyed, and doth by these presents grant and convey unto the said D. B. Harrell the following lands, to wit: lots No. 165, 131, 132, 133, 158, 157, 156, and seventy-one acres off of the north half of lot No. 124; the north half of lot No. 125; the west half of lot No. 164; the north half of lot No. 126; all situated in the nineteenth district
80 of said county, and known as the John D. Snelling place: To have and to hold said premises unto himself, his heirs, and assigns forever. And the said A. H. Echols for himself, his heirs, executors, and administrators, the said bargained premises with all the rights and title thereto unto the said D. B. Harrell, his heirs, and assigns will warrant and defend against the claims of all persons whatsoever.

In witness*eth* whereof the said A. H. Echols hath hereunto set his hand and seal this the day and year above written.

A. H. ECHOLS. [L. S.]

Signed, sealed, & delivered in presence of—
JOSIAH HARRELL.
DAVID E. PONDER.

GEORGIA, *Randolph County:*

Personally before me came Josiah Harrell, who, being duly sworn, says that he saw A. H. Echols sign, seal, and deliver the above deeds for the purpose therein mentioned.

JOSIAH HARRELL.

Sworn to & subscribed to this 4th day of November, 1868.

M. GORMLY, *Ordinary.*

81 GEORGIA, *Stewart County:*

The within deed recorded in book W, page 511, in clerk's office of superior court of Stewart County, this Nov. 10, 1868.

A. B. HARRISON, *Clerk.*

Deed to D. B. Harrell.

STATE OF GEORGIA, *Stewart County:*

This indenture, made and entered into this the 26th day of Oct., eighteen hundred and sixty-eight, between A. H. Echols and D. B. Harrell, witnesseth:

That the said A. H. Echols, for and in consideration of fifteen hundred ($1,500) dollars, to him in hand paid, hath sold and bargained, and doth by these presents sell, grant, & convey unto the said D. B. Harrel all that parcel of land known as the W. S. Perry place, upon which he lived in the year eighteen hundred and sixty-five, containing six hundred and eighty (680) acres, more or less, and bounded as follows: On the east by the John D. Snelling place & J. C. Byrd place; on the north by L. A. Lowry & P. D. Hill; on the west by the John G.
82 Perry lands; on the south by the Trammell & Snelling lands or places. To have and to hold the said premises with all the rights and titles thereto, unto him, the said D. B. Harrell, his heirs and assigns forever.

And the said A. H. Echols for himself, his heirs, executors, and administrators, the said bargained premises together with all the rights and titles thereto, unto him, the said D. B. Harrell, his heirs and assigns, will warrant & forever defend against the claims of all persons whatever.

In witness whereof the said A. H. Echols has hereunto set his hand and seal this the day and year first above written.

A. H. ECHOLS.

Signed, sealed, and delivered in presence of
JOSIAH HARRELL.
DAVID E. PONDER.
[Stamps.]

GEORGIA, *Randolph County:*

Personally came before me, Josiah Harrell, who, on oath, says that
83 the said A. H. Echols sign, seal, & deliver the above deed for the purposes above named.

JOSIAH HARRELL.

Sworn to & subscribed before me this 4th Nov., 1868.

M. GORMLY,
Ordinary, R. C.

GEORGIA, *Stewart County:*

The within indenture recorded in book W, page 511, clerk's office superior court Stewart County, this Nov. 10, 1868.

A. B. HARRISON, *Clerk.*

STATE OF GEORGIA, *Bibb County:*

Personally before me, Samuel T. Bailey, U. S. commissioner for southern district of Georgia, came David B. Harrell, who, on oath, says that the facts set forth in the above answer are correct and true, so far as depends upon his knowledge, and, so far as they depend upon information received from others, he believes to be true.

DAVID B. HARRELL.

Sworn to & subscribed before me this 29th Oct., 1869.

[SEAL] SAM'L T. BAILEY,
U. S. Com'r, So. Dist. of Ga.

Filed Nov. 25, 1869.

84 *Answer of R. J. Grimes.*

And afterwards to wit, on the twenty-fifth day of November, A. D. 1869, came R. J. Grimes, one of the defendants, by his solicitor, Willis A. Hawkins, esq., and filed his separate answer to said bill of complaint, as follows:

This defendant, R. J. Grimes, now and at all times hereafter saving and reserving to himself all benefit and advantage of exception, which can or may be taken to the many errors, uncertainties, & imperfections in said bill contained, for answer thereunto, or to so much and such parts thereof as he is advised or believes is material or necessary for him to make answer unto, answering, says:

That it may be true as stated, and this defendant admits the same to be so, that William L. Jarrell applied for and was adjudged a bankrupt, as charged in complainant's bill; that complainant was appointed his assignee and entered upon the discharge of his duties as such, as charged. He admits that said Jarrell was largely in debt at the time he filed his schedule, as he afterwards learned by a notice served
85 upon him as one of said Jarrell's creditors. He knows nothing of the adequacy or inadequacy of his property returned to pay his said indebtedness except as charged in complainant's bill.

And in further answer to said bill, this defendant admits that the said Jarrell, bankrupt, on the first day of October, 1867, was in possession, as of his own right and property, of the lands particularly described in complainant's bill, and known as the "John D. Snelling place," William S. Perry place, Jack Perry place, the Bill Snelling place, & the Richland place.

And in further answer, this defendant says that he knows nothing about the said Jarrell, for the purpose of hindering, delaying, and defrauding his creditors, and acting with a view to prevent his said property from coming to the hands of his assignee, procuring the execution referred to in compl't's bill, or any other execution to be levied on said property. All he knows is that said execution, in favor of J. Culpepper, and against J. Smith and said Jarrell, was levied by Sheriff Feagin on the John D. Snelling place and the Richland place, as the property of said
86 Jarrell, and, as such, advertised for sale, and was sold on the first Tuesday in October, 1867; and that A. H. Echols bid off the John D. Snelling place, and William L. Jarrell's father, Willis S. Jarrell, bid off the Richland place, being the highest and best bidders. He further says that he admits said Echols was clerking for said Jarrell at the time of said sale, but knows nothing, of his own knowledge, what salary he was getting from Jarrell, or anything about it. He admits that said

Echols bid the John D. Snelling place off at seven hundred and twenty-five dollars; and admits that the Richland place was bid off by Willis S. Jarrell, for the amount charged in said bill.

And defendant, in further answering, says he knows nothing of the intention of the said Jarrell, bankrupt, Echols, & Willis S. Jarrell, combining and confederating to impair, hinder, and impede, & delay the operation of said law, and knows nothing of what statement or representations the said William L. made to W. A. Rawson, or any other party concerning said sale, and the dignities or superiority of any liens upon said land. He only knows that other parties than Echols and Willis S. Jarrell bid for said lands, and that said Rawson, at some time during said sale, announced that whoever purchased
87 the land would purchase a law-suit, but at what stage of the proceedings this announcement was made, or what prompted him to make it, defendant cannot say, for he has forgotten touching the former, and never knew concer'ing the latter. He knows nothing of any fraudulent intent on the part of Jarrell, or any other person, in procuring said sale to be made, in the proceedings thereof, in having announcements made, or in any other thing connected therewith; and he knows nothing, not having been interested therein concerning the date of said mortgage, if any existed on said execution, and knows nothing about the fraudulent actions and intentions, as charged in said bill of the parties, or any one else, on the day of said sale. He knows nothing of any promise made said Sheriff Feagin by said Jarrell, as charged in said bill, but from his knowledge of the character & probity of said sheriff, has no idea that any such proposition was made, or if made, was instantly and indignantly spurned, as he does not think Feagin would be guilty of such disreputable conduct; knows nothing about the payment of the money, or any of the facts and circum-
88 stances connected therewith, and, in short, denies knowing anything else about said sale and surrounding circumstances other than those above stated. In further answer, defendant knows nothing about who exercised acts of ownership over said places after sold by the sheriff.

This defendant says that, on the 31st day of December, 1867, he rented the John D. Snelling place from William L. Jarrell, who, at the time, stated to this defendant that he was acting as the agent of said A. H. Echols, and would have to take the note or obligation payable to said Echols. He admits that A. J. Bramlett rented the place with him, and for the year 1868, and that they were to pay twenty-five dollars and eight bales of cotton to class middling of such as was raised on the place; and this defendant denies emphatically that said Jarrell represented (or pretended to represent, or acted in that way,) the place as his own, but stated that he was acting as agent of said Echols. He denies positively that the name of Echols was not mentioned, but states emphatically that it was, and that he, Jarrell, was renting said place as agent for said Echols, and the note or obligation for rent was
89 given accordingly. He states that the obligation was signed at the same time the place was rented, and denies that Jarrell asked that the name of Echols be inserted, and that at the signing was the first mention of Echols' name. He again states that Jarrell informed him that he was acting as agent for Echols, and upon such this defendant, without any request from Jarrell, or any other person, signed the note payable to said Echols. He knows nothing about the renting of the other places referred to in said bill; who they were rented to; for what and for whom, or any other fact connected therewith. Defend-

ant admits that the cattle from said Jarrell's place was sent from his place, in the early part of the fall of 1867, and that the stock was carried off some time before Christmas of that year, but for whose benefit, or where carried, and what became of them, defendant knows nothing.

This defendant positively denies having any interest whatever in said litigation, save as a tenant and knows nothing of any combination & confederation between the parties or any one else concerning said lands and property. He knows the said Echols returned and offered
90 said lands for sale, but knows nothing of his selling them to David B. Harrell, or what understanding, if any, existed between them, or what was paid for the lands or anything about it, or the transaction between the parties. Defendant does not know, and here so states, that, about the last of October or first of November, 1868, and before his said obligation was due, that said David B. Harrell informed this defendant that he had purchased the said place, and also defendant's note, or obligation. This defendant, in further answer to said bill, admits that he is now, and has been since the first of January, 1868, in the possession of said John D. Snelling place: part of the first year as the tenant of said A. H. Echols, and since then as the tenant of David B. Harrell; and that he has paid to the said Harrell his rent for the year of 1868. Defendant says that he thinks the John D. Snelling place is worth eight bales cotton per year rent and not more.

Defendant admits that he has refused to surrender said John D. Snelling place up to complainant, because, not holding under him, he considered he had no such right, and that if the complainant had been entitled thereto he thought the law of the country adequate to af-
91 ford a remedy to give him possession of said place, and besides he was prevented, had he been so disposed, and is now prevented from giving possession of said place to complainants, by an injunction now pending, as he is advised and believes, having had no notice of its dissolution in the superior court of Stewart County, and said State of Georgia. And for more positive and specific answer to said bill and the interrogatories therein contained and propounded to this defendant he answers and says:

To the 1st, that he is in possession of the John D. Snelling place, and in the occupation of the same, and as the tenant of David B. Harrell, in Stewart County, Georgia.

To the 2nd, he says that he, in connection with A. J. Bramlett, did rent the John D. Snelling place for the year 1868, and received the possession thereof from the said William L. Jarrell in person, but not acting for himself alone, because he stated that he was acting as the agent of said A. H. Echols, and as such agent this defendant, knowing nothing to the contrary, regarded the said Jarrell, and as such received possesssion of said place from him, expecting to pay the note and account to said Echols for the said rent, and to regard himself as tenant of said Echols. He admits that he delivered his obligation to said Jar-
92 rell, as several times heretofore stated, and as the agent of said Echols; and that the said Jarrell at the time of the giving of said obligations, did mention the name of Echols by saying that he was acting as the agent of said Echols in said renting and would take the note payable to said Echols. This defendant denies that said Jarrell did not mention the name of Echols save to ask the privilege of inserting his name in said note. He spoke of Echols repeatedly and said he was acting as his agent, and from his whole conversation defendant would state that he, Jarrell, appeared only as agent and seemed to be acting without any deceit or concealment, but fairly and bona fide.

To the 3rd, he says, that he is now in the possession of said plantation under and by virtue of a contract of renting, made sometime the first of the present year, and with David B. Harrell, and not under said contract made with Jarrell as agent of Echols.

And having fully answered all the points and charges in said bill, that he is advised and believes is material or necessary for him to make answer unto, and standing ready to sustain and prove his said answers, prays to be discharged hence with his reasonable costs in this behalf expended.

WILLIS A. HAWKINS,
Def'ts Sol'r.

93 STATE OF GEORGIA, *County of Bibb:*

Personally appeared before me, Samuel T. Bailey, U. S. commissioner for so. dist. of Ga., *U. S. com'r in and for the so. dist. of Geo.*, Andrew J. Smith, who, on oath, says that the facts set forth in the above answer are correct and true, as far as they depend upon his own knowledge, and, so far as upon information and advice derived from others, he believes to be true.

R. J. GRIMES.

Sworn to and subscribed before me this 29th day of Oct., 1869.
S. T. BAILEY,
U. S. Comm'r So. Dist. Ga.

Filed Nov. 25, 1869.

Replication.

And afterwards, to wit, on the 11th day of April, A. D. 1870, came the said complainant, by his solicitors, Lyon, DeGraffenried and Irwin, and filed his replication to defendants' said answers, as follows, to wit:

The replication of Elisha H. Beall, complainant, to the answer of David B. Harrell and R. J. Grimes, defendants.

94 This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answers of the said defendants, for replication thereunto, saith that he will aver and prove his said bill to be true, certain, and sufficient in law to be answered unto; and that the said answer of the said defendants is uncertain and untrue and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answers contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct; and humbly prays as in and by his said bill he hath already prayed.

LYON, DEGRAFFENRIED & IRWIN,
Compl't's Sol'rs.

Filed April 11, 1870.

Order for examiner.

And afterwards, to wit, on the 2nd day of May, A. D. 1870, the following order of court was made, in the words following, to wit:

ELISH. H. BEALL, ASSIGNEE OF W'M L. JARRELL, bankrupt,
vs.
DAVID B. HARRELL, R. J. GRIMES, & OTHERS.

95 Upon the application of counsel for complainants, and consent of counsel for defendants—

It is ordered that Nathaniel A. Smith, of Americus. be, and he is hereby, examiner of this court to examine witnesses in this cause, and to forward the depositions to this court in accordance with the rules of this court. Be it so.

JOHN ERSKINE,
U. S. Judge.

MAY 2, 1870.

Agreed to.

JACKSON, LAWTON & BASSINGER,
For Defendants.
LYON, DEG. & I., *Compl't's Sol'rs.*

Order to enlarge rule, &c.

And afterwards, to wit, on the 29th day of November, A. D. 1870, the following order to enlarge rule as to witnesses was granted in the words following, to wit:

Ordered by the court that the rule for taking testimony in this cause be so enlarged as that the examination of witnesses before N. A. Smith, examiner, &c., returned and certified by him to and during the present term be held decreed, and taken as sufficient compliance with the rule to allow said examination, so far as applicable to the issues in this case, to be had and considered on the hearing thereof, it being shown that such examination could not be made earlier, and that the cause
96 be set for a hearing.

Consented to.

JACKSON, LAWTON & B.,
Def'd'ts' Sol'rs.
LYON, DEG. & I., *Compl't's Sol'rs.*
JOHN ERSKINE, *U. S. Judge.*

Testimony.

And afterwards, to wit, on the 22d day of November, A. D. 1870, the following testimony, taken before N. A. Smith, esq., examiner, was filed with the clerk, and reads as follows, to wit:

E. H. BEALL, ASSIGNEE OF W'M L. JARRELL, bankrupt,
vs.
D. B. HARRELL AND R. J. GRIMES.
} In equity.

E. H. BEALL, ASSIGNEE W'M L. JARRELL, bankrupt,
vs.
ANDREW J. SMITH, THOMAS J. CLEMENTS.
} In equity.

GEORGIA, *Stewart County:*

JULY 26, 1870.

97 It is agreed between counsel for complainants and respondents that there be but one examination of each witness in the above

cases, and that the evidence taken by the examiner be used, so far as applicable and legal, in each of the above cases, upon the trial thereof.

LYON, DEGRAFFENRIED & IRWIN,
Compl'ts Sol'rs.
W. A. HAWKINS, *For Def'd'ts.*

UNITED STATES OF AMERICA,
State of Georgia, ss:

Southern district of Georgia, Lumpkin, Stewart County.

Be it remembered that, on this twenty-sixth and twenty-seventh days of July, in the year of our Lord one thousand eight hundred and seventy, I, an examiner, duly appointed by the circuit court of the United States for the southern district of Georgia, did call and cause to be and personally appear before me at the office of E. H. Beall, in the town of Lumpkin, Stewart County, in the said southern district of Georgia, in the State aforesaid, the following-named witnesses, to wit:
Henry G. Feagin, R. J. Grimes, E. H. Beall, Josiah Harrell, and
98 John B. Williford, for the complainant, and A. J. Smith, Jeptha Wharton, and Thomas W. Clements, for the defendants, to testify and the truth to say on the part and behalf of the complainant and defendants in a certain suit or matter of controversy now depending and undetermined in equity in the fifth circuit court of the United States for the southern district of Georgia, at Savannah, wherein Elisha H. Beall, assignee of William L. Jarrell, bankrupt, is complainant, and David B. Harrell, R. J. Grimes, and others, are defendants.

And the said HENRY G. FEAGIN, being about the age of forty years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, the solicitors for the complainant and defendants did carefully examine the said Henry G. Feagin, and he did thereupon depose, testify, and say as follows, to wit:

I was sheriff of Stewart County in 1867. As sheriff of Stewart County, I levied on some property of William L. Jarrell.

(Counsel for defendants objected to witnesses stating that he, as sheriff, levied on and sold any property as the property of W'm L. Jarrell, on the ground that the original execution and entries thereon
99 was the best evidence.)

The sale under the levy was in September or in October, 1867. The property sold was the Snelling place, in this county, said to contain sixteen hundred and fifty acres, (1,650,) in the nineteenth district of this county. The purchaser of the property at the sale was A. H. Echols. Mr. Echols, at that time, was living with Mr. Jarrell, and was clerking for him and attending to his business generally. The land was knocked off for seven hundred and twenty-five ($725) dollars, according to my recollection. Mr. Jarrell was present at the sale. I don't recollect whether David B. Harrell was present at the sale. Mr. Jarrell told me before the sale that he wanted the land to be sold on that execution before W. A. Rawson, who held a mortgage on the land, returned from the north, and that if I could work it through before Mr. Rawson returned, he would sell me a certain portion for almost any sum.

(The saying' of Mr. Jarrell was objected to by counsel for the defendants on the ground that they were incompetent between these parties, and that Jarrell was a competent witness.)

This was said, I think, after the levy, and a few days before
100 the sale. It was after Mr. Rawson returned, as I knew nothing about the mortgage. He proposed to sell me what was on the other side of the creek adjoining my place. He said he wanted the sale hurried up before Mr. Rawson got back. He may not have used the word hurried. The part beyond the creek was a part of the John D. Snelling place. Mr. Jarrell at the time he made these propositions to me was living on that place. Mr. Jarrell was in possession of and claiming the John D. Snelling plantation at the time these propositions were made to me by Jarrell. Mr. Jarrell, to the best of my recollection, staid in that place till some time in January after the sale. After he gave up the possession, Grimes & Bramlett went into possession. After the sale, and until Grimes & Bramlett went into possession, Mr. Jarrell seemed to control the said place, and went on with the business there just as he did before the sale. Judge M. Gillis, as att'y, represented the fi. fa. under which this land was sold. He practices law in this town—Lumpkin. I was acquainted with A. H. Echols before the sale. Don't know certainly about his pecuniary condition. He was clerking for Mr. Jarrell before the sale. He had
101 no visible means that I knew of. I don't know whose money purchased the land. The day before the sale Mr. Jarrell told me that he had sent Mr. Echols to Macon to get some money, and that he would have a bidder there to buy the land, or a man there to buy the land. This may have been more than one day before the sale. I can't say that I recollect the exact words.

(Counsel for defendants objected to the sayings of Jarrell.)

This conversation was not more than three or four days before the sale and my impression is, that it was the day before the sale. The impression left on my mind from the conversation with Mr. Jarrell was, that Mr. Echols was to bid off the land, but nothing positive was said by Jarrell as I can recollect.

(Counsel for defendants objected to witness stating the impression on his mind.)

Mr. Jarrell talked to me two or three times before the sale, and I can't recollect all that was said by him. He stated to me several times, and always when we talked about it, that his object was to defeat Mr. Rawson. Mr. Jarrell stated to me several times before the sale that he
102 would sell me the part mentioned before at almost any price, provided I would get the sale through. After the sale, he proposed to sell it to me at seventy-five (75c) cents per acre, and in the final settlement proposed to give me a fraction of a lot of which I owned a part. This I refused, as I told him there would be a law-suit about it, and I would have nothing to do with it. After I found out how the thing was working, and for what purpose the sale was made, I believed there would be a law-suit.

(Counsel for defendants objected to witness's stating why he believed there would be a law-suit.)

I didn't know how the law-suit would be. I knew Mr. Rawson had a mortgage, and supposed that there would be a law-suit about the land. I was there when the trade for rent was made by Grimes and Bramlett. Mr. Jarrell was there. Other lands was sold that day as the property of Mr. Jarrell. They were in the twenty-fourth district of this county, named, I think, the Richland place. At the time of the levy and sale,

Mr. Jarrell's father was living there. Mr. Jarrell professed to be running the place and farming there himself. I think that place
103 brought nine hundred ($900) dollars—don't recollect positively how much it brought—eight or nine hundred or a thousand dollars. Willis S. Jarrell passed as the father of W'm L. Jarrell. Willis S. Jarrell purchased that place. The money for the purchase of these lands was paid in Judge Gillis' office, in this town. Where the money was paid, both the Jarrells, as I think, were present; can't be positive about Willis S. Mr. Echols, Judge Gillis, & I were present, besides the Jarrells. Some other persons may have been there. I think that the John D. Snelling place was first paid for, and then the same money was used to pay for the other places. Judge Gillis, as att'y, conducted the settlement. I don't know why the same money paid for both places: don't think the old man, Willis S., had any money—at least he was not handling any that day. Judge Gillis was at that time representing the judgment against W'm L. Jarrell. On the day of the sale W'm L. Jarrell came to me, asked me to put up the John D. Snelling place, and wanted me to knock it off as quick as I could; said Mr. Echols would be there to bid for it. I told him I could not knock it off as long
104 as anybody would bid, but would knock it off as soon as the bidding ceased. I went to Mr. Jarrell's once to arrest him, and he was sick. He sent, I think, for D. B. Harrell to consult with him. It was either David B. or Joseph Harrell. I think David B. came there before I left; don't know that David B. was acting as att'y for Mr. Jarrell. I don't recollect precisely the time. It was some time between October and Christmas, 1867. I think, but won't be positive, that, previous to the levy and sale, I levied on some property in the possession of Mr. Jarrell as the property of a Mr. Holloman. It may have been after the levy and sale. Mr. Jarrell put in a claim to the property; don't recollect what attorney represented Mr. Jarrell in the claim.

(Defendants' counsel objected to the testimony of witness in relation to the property levied on as Holloman's and everything in relation to it, on the ground that it is irrelevant.)

Cross-examination:

A very good crowd was present when the lands sold as Jarrell's were sold at sheriff's sale; about the usual number present on such occasion.
105 W'm A. Rawson came up after I had cried this property some time and before it was bid off. Don't think Mr. Rawson bid for it; one other person besides Mr. Echols bid for it, but I don't remember who it was. I made no agreement with W'm L. Jarrell to carry out any proposition he made to me, and didn't carry out any. I didn't do anything on the day of the sale to aid Jarrell in carrying out any design to defraud his creditors, but got up and read out the advertisement and made the sale as I was in the habit of doing at all sales. The money was paid by Echols in accordance with the bid; I receipted for it on the execution and made him a deed to the land. He was the highest and best bidder at the sale. Judge Gillis directed me to make the levy and sale. He, Mr. Gillis, was the attorney for the pl'ff in fi. fa. The fi. fa was in favor of Jeremiah Culpepper, transferred to Mr. Fitzgerald, and by him to Jas. A. Fort. I think Mr. Jarrell first spoke to me about buying that execution on that land, but the levy and sale was made in accordance with instructions from Judge Gillis, attorney for pl'ff in fi. fa. I think I sold other lands that year at sheriff's sale, but can't recollect any particular lands. All lands
106 sold at sheriff's sale that year brought very much less than their

value. At the time of this levy and sale I think I had in my hands only this execution against Jarrell. I have had other executions, but don't recollect when. The two plantations brought more money than enough to pay the execution, and the surplus was paid to Jarrell. I think he gave me a receipt for it. Mr. Jarrell was at that time in possession of a large amount of land and other property at the time of the sale. Mr. Echols had been living with Mr. Jarrell from the beginning of that year. Don't know that he had been living with Mr. Jarrell longer. He was considered a good business man. I never saw him out of the way with liquor but once; consider him a man of sober habits. I was present when Grimes and Bramlett rented the land. Jarrell stated that he was acting as agent for Echols; the note for the rent was made payable to Echols. Mr. Jarrell told Mr. Grimes that he would have to take the note that way, and then turned to me and said, "You understand it all." Echols was not present. I think, and am pretty certain that Echols was present at some time, when
107 Jarrell told me about getting some one to bid off the land. He was not present when Jarrell came to me on the day of the sale, as I think. He was not present when Jarrell told me a day or two before the sale that he would have a man there to bid off the land. David B. Harrell, Robert J. Grimes, Andrew J. Smith, or Thomas J. Clements were neither of them present, as I recollect, at any conversation between Jarrell and myself. I can't recollect that any conversation between Jarrell and myself had reference to the Richland place; don't think much was said about that place. I don't remember that Thomas J. Clements was present at the sheriff's sale; he may have been. The Richland and John D. Snelling places were levied on and sold at the same time. Judge Gillis and Echols handled the money for the amount of the sales. When the money was paid, Judge Gillis told me that there was money enough to pay the execution and some was paid back to Jarrell. I can't say all the persons present at the settlement.
108 Don't remember that D. B. Harrell, R. J. Grimes, Andrew J. Smith, or Thomas J. Clements was present. I am now working the John D. Snellings place; Mr. Grimes is tending to business there. I went into possession last winter under E. H. Beall, complainant. Mr. Grimes was on the place and is now in my employ. Three or four hundred acres are in cultivation. Mr. Beall told me to take possession and that he should demand rent. There was no agreed price as to rent. He said we could hereafter fix the rent. The idea conveyed was if we could hold the place, we could settle upon the rent. Grimes told me that he rented the place from D. B. Harrell last year; that Harrell asked too much rent from him for this year, and he would not give it.

(Counsel for complainant objected to the sayings of Grimes.)

Re-examined by counsel for compl't:

The settlement for the amount of sales was made a few minutes after the sale. Judge Gillis and Mr. Jarrell were both hurrying up the settlement, and came to me before I was ready. I went to Judge Gillis' office. I think Mr. Echols had the money. He handed it to Judge Gillis,
109 who told me that the settlement was all made and satisfactory. I saw no money paid back by Judge Gillis to any one, and handled no money myself. The parties were all present and satisfied. I counted no money, and handled none; merely gave and took receipt. The Snelling place is worth twice as much as the W. S. Perry place, and was in 1867. I don't know whether Echols, in 1867, was worth four thousand dollars, or any other amount, and don't know what he was

worth. The Snelling place has been worth, for rent, during the last three years eight hundred or a thousand dollars per year.

Cross-examined:

When I went to arrest Mr. Jarrell it was for violating an injunction in favor of James M. Clark.

H. G. FEAGIN.

And the said R. J. GRIMES, being about the age of thirty-one years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, the solicitors, for the complainants and defendants,
110 did carefully examine the said R. J. Grimes, and he did thereupon depose, testify, and say as follows, viz:

I know a plantation in nineteenth district of Stewart County, said to contain sixteen hundred and fifty (1,650) acres, known as the John D. Snellings place. I have been in possession of that plantation since January first, 1868. I rented the plantation for the year 1868, in partnership with Mr. Bramlett. I negotiated the terms of rent with W'm L. Jarrell. The negotiation was had in December, 1867, between the 25th and January first. During the negotiation he did not speak of being the agent of any person. Then he reduced the terms to writing, to wit, a note for Mr. Bramlett and myself to sign. He said that he was acting as agent for Mr. A. H. Echols, and that we were to sign a note payable to Mr. Echols. I told him it did not make any difference to me who the rent went or to whom the note was made payable. Before the time of making the note I never heard of Mr. Echols in the transaction. When I saw the note, I observed to Mr. Jarrell that the note was made payable to Mr. Echols, and he then said that he was acting as
111 agent for Mr. Echols. I was demanded the rent for that place, and was notified that I should have the rent to pay by the commencement of an ejectment suit by E. H. Beall, assignee, in Stewart superior court. D. B. Harrell demanded rent of me for that place by notifying me that I must pay him the note in Cuthbert about the 16th November, 1868. When he notified me he was on his way to attend superior court in *in* Cuthbert. Mr. Echols came to see me about the land after I had rented it. He offered to sell me the land at seventy-five cents per acre.

(Counsel for defendant objects to any saying of A. H. Echols.)

He said he would give me a title such as he had. He said he knew there would be a lawsuit about the land, and that he would sell it to me for that price—I to take all the chances to keep the land. I was present at sheriff's sale when this land was sold in 1867. The land was then worth five dollars per acre. I have known the land for the last twenty years. I lived adjoining the land until 1868. W'm L. Jarrell was in possession of, and exercising acts of ownership over, the land in 1867, and lived on it. In talking to me, he did not admit any other claim to the land than as his. I never heard Echols
112 claim the land in my life. I have answered a bill in the case of E. H. Beall, assignee of W'm L. Jarrell, bankrupt, vs. D. B. Harrell and myself, in U. S. circuit court. The answer was made out in Americus, sworn to in Macon, and to be used in Savannah. I don't recollect before whom the affidavit was made, except that he was U. S. commissioner in Macon. I have made only one answer to the bill in that case. In making that answer, Mr. Burke, of Americus, took down the answer. He is a lawyer of the firm of Hawkins & Burke. I have heard a copy

of that answer, of file in the clerk's office of the circuit court, read over to me. I don't consider that the writer of that answer has put the facts down as I told him to. While the answer was being written out D. B. Harrell, A. J. Smith, & T. J. Clements were each present a part of the time. I don't recollect whether any one else was present or not. I am not a married man. The property is worth, over and above my debts, six or eight thousand dollars, as I gave it in for taxes, according to my recollection—was worth that, I reckon, in 1867 or 1868. (Counsel for defendants objects, as to witness being married and as to what he is worth.) When I gave directions, in Americus, as to making out
113 my answer, the directions were given in accordance to the facts as I have now stated them. I was first apprised that my answer to the bill in U. S. court was different from what I had directed it to be when I went to Macon to hear the answer to a bill for injunction which I had served upon Judge Harrell, and to see whether the injunction would be sustained or not. When I seen the answer, I said it was wrong. I expressed a desire to correct it, and I then made an affidavit explaining that answer before Judge Cole. Witness identifies affidavit presented as the one he then made, and states that it is according to the facts of the case. I did not see D. B. Harrell here on the day the John D. Snelling plantation was sold at sheriff's sale. I settled with D. B. Harrell for a part of the rent for that plantation, for the reason that he got out a distress warrant, and because he filed a bill of injunction against me about that place. J. K. Davis and E. H. Beall were also parties to the bill. I saw the bill, but could not read it, and never heard all of it read. The sheriff, Mr. Feagin, came to me with the bill. I would not have made a settlement with D. B. Harrell, except for that bill.

Cross-examined:

114 The injunction in favor of D. B. Harrell against me was granted by Judge Worrill. There were two injunctions. As soon as the second injunction was granted, I compromised with D. B. Harrell—about the last of April, 1869. On the 4th of May, 1869, the agreement for rent of the plantation for 1869 was made. I was to pay him eight bales of cotton and twenty-five dollars in money—am not certain about the twenty-five dollars; gave my note for the rent; have not rented it for this year; am now on the place as the agent of Mr. Feagin. After the termination of my tenancy I did not return the plantation to D. B. Harrell. He never demanded it. The agreement between Mr. Feagin and myself for this, is that I am to stay on the place and cultivate it. He told me he would pay me well for it. (Defendant's counsel objected to any testimony of witness as to agreement between him and Mr. Feagin, as irrelevant.) The injunction in my favor against D. B. Harrell, was granted Dec. 17, 1869, and is still in force; have not paid Judge Harrel the rent for last year. I *seen* both Jarrell and Echols have the notes given for the rent of the plantation for 1868. Echols had them after Jarrell demanded payment, when he tried to sell
115 me the land. The next time I saw anything of the notes was that they were copied in the bill filed by Judge Harrell against me. Judge Harrell told me, I think, that he owned the notes before they were due. I made the affidavit before Judge Cole, in Macon, after I went in possession under Mr. Feagin. When I made out the answer to the bill in the U. S. court I was in under Judge Harrell. Jarrell had a crop growing on the Snelling plantation in 1867. It was not all gathered when the land was sold. Echols was there when in the county; was not there all the time; called it his home.

(Counsel for complainants object to answer of witness, that Echols called it his home.)

Neither Jarrell or Echols was married. Willis S. Jarrell, at the sheriff's sale of the land, bought the place known as the "Richland" place. A tolerably large crowd was present. Seen nothing improper in any bidder or the sheriff at the sale. W'm A. Rawson was not present according to my recollection, when the sale commenced, but came up before the John D. Snelling place was bid off. I was not a purchaser but proposed to become one, and was advised not to bid. W. A. Rawson, after the sale was over, announced that whoever bought that
116 plantation would buy a lawsuit. I don't recollect positively when the announcement was made—whether it was before or after the sale. It may have been before the sale was completed. I did not employ Hawkins & Burke to answer the bill filed against me in U. S. court. The way I came to go there was, that I saw Judge Harrell, in Lumpkin, after I was notified that the bill in U. S. court had been filed vs. Judge Harrell & myself, and asked him what to do, and he told me to meet him in Americus on a certain day and he could have the matter attended to. I met Judge Harrell, we went to the office of Hawkins & Burke, and the answer was made out partly by taking up the bill by sections and answering each section. It was not all answered in that manner. In dictating my answer, I told Mr. Burke that in the negotiations about the rent, Jarrell had not told me that he was acting as the agent of Echols; but that before the notes were delivered to Jarrell he said that he was acting as agent of Echols. Jarrell was a man of large property in 1867. Don't know of any lands being sold in Stewart County, for cash, during that year. They would have sold for less than their value, if sold for cash.

117 Re-examined:

Mr. Feagin was the man who advised me not to bid for the land. The rent of the land for 1868, 1869, & 1870 was worth eight bales of cotton per year. My property has increased some since 1867. He, Judge Harrell, up what I made on the place for the rent for 1869.

R. J. GRIMES.

The following is a copy of the affidavit referred to:

GEORGIA, *Bibb County:*

And now comes Robert J. Grimes, who makes the following statement under oath in relation to his answer filed to bill in 5th circuit court of the United States for the southern district of Georgia, in favor of E. H. Beall, assignee, against David B. Harrell, defendant, and others, says that the said answer of his was made out by the attorney of said David B. Harrell; that it was in denial of certain allegations in said bill as read to him by said attorney; and that, at the time of making said answer, he stated to the attorney, who wrote out the same, all the circumstances and facts connected therewith, as set forth in the
118 bill now under consideration, of which he had knowledge thereof; that, from his statement so made at the time his answer was written, or so much of said statement as he was advised as necessary to be written in answer to said bill; that his answer was read to him; and that, at the time of the reading thereof, he did not so understand or intend it to be as it appears now to be and understood by the copy thereof; and, in explanation thereof, makes the following statement: That the land known as the John D. Snelling place was in the posses-

sion of W'm L. Jarrell on the first day of October, 1867; that, on the first Tuesday of said month and year, the same was sold at sheriff's sale; that A. H. Echols bid the same off; that W'm L. Jarrell remained in possession of the same, exercised acts of ownership over the same till rented by this deponent; that the negotiations for the rent thereof were carried on by deponent and said William L. Jarrell; that in all the negotiations, as for the rent of the same, until the final agreement of the terms, was done by deponent and said Jarrell as the owner thereof till the same was being reduced to writing, when Jarrell, for the first time, mentioned that he was acting as agent of A. H. Echols, and
119 required the obligation of rent to be made to A. H. Echols, to which deponent made no objection, and this at the time so gave his obligation; that at the time he believed he was renting said place from Jarrell as his property; that said Echols was, at the time of the sale, and before and afterwards, acting as the clerk of said Jarrell and his agent; that, so far as deponent knows, he owned and possessed no property outside of his salary as clerk; that Jarrell and Echols left this country about the same time; and, by reputation and report, together, that A. H. Echols came back about the middle of October, 1868; that he came to see deponent, and offered to sell him the Snelling place at seventy-five cents per acre, stating, at the time, that he knew their would be a lawsuit about it; that, at said time, Echols presented to this deponent his obligation for the rent of said place, and deponent refused to pay the same, and so notified said Echols; that afterwards said Harrell told him that he owned said obligation, and afterwards said Harrell commenced proceedings to recover and collect the same.

R. J. GRIMES.

Sworn to & subscribed, Jan'y 29, A. D. 1870.
(Signed)
C. B. COLE,
Judge S. C. M. C.

120 And the said E. H. BEALL, being about forty-five years of age, and having by me first cautioned and sworn to testify the truth, the whole truth, and nothing, but the truth, in the matter of controversy aforesaid, the solicitors for the complainant and defendants did carefully examine the said E. H. Beall, and he did, therefore, depose, testify, and say as follows, to wit:

I was in Lumpkin the day the John D. Snelling place was sold at sheriff's sale. I was that day starting for home, and heard the sheriff crying some property, and was lying on the grass; saw Mr. W. A. Rawson coming from his grocery-store. He met W. L. Jarrell, and, after they talked a few minutes, Mr. Rawson went on the stand, and said that anybody who bought the Snelling plantation, which was then being sold, would buy a lawsuit. The land was, however, sold. After that sale was through, and the Richland place was being sold, William L. Jarrell came to me, and asked me to announce that I controlled an execution in favor of John S. Yarbough vs. Dr. Alston, of whom Jarrell had bought the place; and that it was a lien upon the land. I told him that I was not interested to do so, and declined. He then asked
121 me that he might get Mr. Wimberly to do it for him, and I consented. He then called Mr. Wimberly, and asked him to make the announcement, who did so while the land was being sold. That morning I was in Mr. Wimberly's office, and Mr. Jarrell said that Feagin, the sheriff, thought he was going to cry his (Jarrell's) property, but that he would not do it. In the fall, after this sale, he was talking to

me about going through the court of bankruptcy, and said that he had employed D. B. Harrell, Jos. Harrell, and W. A. Hawkins as his attorneys. Judge Harrell, before the sale, represented, as an att'y, Mr. Jarrell in a claim-case, made out a bond, and stood his security. (Counsel for defendant objected to each of the parts of the testimony of Mr. Beall.) Mr. Beall says he is uncertain about Judge Harrell's acting as attorney for Mr. Jarrell; knows he made out the bond, and stood his security. The fi. fa. was in favor of Crane, Boylston & Co. vs. Peter Reddick and Mark Halloman. I, as assignee of W'm L. Jarrell, commenced actions of ejectment for the Snelling's, Richland, and Perry places in October, 1868. After those actions were filed, on consultation with the register in bankruptcy, he ordered me to dismiss those actions and file a bill or bills in the U. S. courts, which I did. After or
122 about the time the case in favor of Grimes vs. Judge Harrell was commenced, Mr. Feagin came to me and told me that Grimes was about to leave that place anyhow, and told him to take possession, and that he could pay the rent to me if this case was gained, and to Judge Harrell if he gained it; and that he (Fe'gin) could pay what was right for rent. I had no conversation with Mr. Clements previous to his purchasing the Richland place. After the bill was filed in this case, Mr. Clements came to me to employ me, and I told him that I could not be employed. He did not say that he came to employ me, but to consult me. I told him that I could not be employed. I then said "there is a great deal of fraud in this case." And he then said "there is fraud in it, but you can't find out." (Counsel for defendants objected to Mr. Beall's stating anything said by Mr. Clements to him, on the ground that it was a confidential conversation to him as an attorney.)

Cross-examined:

I lived in Stewart in 1867. I don't recollect any sales for cash during that year, and don't recollect the price. A good many people were
123 present at the sheriff's sale; saw nothing unusual at the sale except Jarrell trying to reduce the price of his own land to be sold. W'm A. Rawson was that day excited. After the sale of the Snelling place, he bid on the Richland place. The amount of the claim on which Judge Harrell was security was four thousand dollars. The claim has been withdrawn, and another claim has been interposed by Mr. Rawson.

E. H. BEALL.

And the said JOSIAH HARRELL, being about the age of forty-three years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, the solicitors for the complainant and defendants did carefully examine the said Josiah Harrell, and he did thereupon depose, testify, and say as follows, viz:

I was present in Lumpkin on the day the Snelling place was sold at sheriff's sale. D. B. Harrell was present also. Don't know who drew the sheriff's deed to that property. W'm L. Jarrell spoke to me
124 about making out his application for discharge as a bankrupt. I told him I did not practice in that court, and we made out some papers and went to Americus, and S. H. Hawkins, esq., made out his application, I believe. Judge Harrell and myself were never partners. Don't know who was Jarrell's legal adviser in October, 1867, except myself. He sometimes employed Judge Harrell. He (Judge Harrell) went once, at my solicitation, to Albany, to argue a case before Judge Vason. I believe it was a motion to attach Mr. Jarrell on a bill filed by Judge Clark against Jarrell. This was before Judge Harrell was appointed

judge. I don't know that Mr. Jarrell ever said anything to me about the sale of the Snellings plantation under any fi. fa.; did not know anything about the sale till a day or two before it came on. I think Mr. Jarrell sent me word that the sale was coming on. I don't think I talked with Mr. Jarrell on the day of the sale; after the sale, can't recollect that I did. I was not present when Judge Harrell purchased the Snellings place of Mr. Echols. The deed was signed in my house. I saw
125 Mr. Echols sign it. I did not know the pecuniary condition of Echols. Had done his practice for several years. He and Jarrell went off about the same time, and, as I understood, together. I once thought I was interested in the purchase of the land from Echols, but don't know whether I am or not. After Echols went off, he wrote to me to sell the land for him. I couldn't sell it for what I thought it was worth, and I wrote him to send me a power of attorney, and I thought he could do better, and he wrote me he would be here on a certain day, and the land could not be sold for what it was worth, because there was a good deal of talk about him—about the land and Echols. We finally sold a portion of it—the W. S. Perry place. When I say we, I mean Echols and I. We sold to a man by the name of Blackburn, for some town property. We got either one lot or two houses, or two houses and lots in Cuthbert. Blackburn valued the property at two thousand dollars, but we didn't value it at so much. A few days after that, I saw Mr. Echols. He said that Blackburn had been to see him, and told him that he had been to Lumpkin and seen Beall,
126 and Wimberly, & Feagin, & Grimes, and others; that they told him he had lost his town property, and he got no title to the W. S. Perry place. Mr. Echols came to see me and wanted to know what to do about it, and I told him to let him have his houses back. Echols & I went down to see Blackburn, and the trade was cancelled. I then proposed to buy the land myself. Don't remember the price. It was some low price. Didn't have the money, and went to Judge Harrell to borrow it. The judge told me that he had no money to spare, but told me to go and examine the titles, and that if the titles were good he would buy it and let me into it. I went and examined the titles and told Judge Harrell that I thought the titles were good and that he could hold the land if he bought it. My family were sick. I got leave of absence from the court and went home, leaving Judge Harrell & Echols here. A few days after that Echols came to my house and told me that he had sold the land to Judge Harrell, and brought me word about raising some money for the judge, but I
127 don't remember what. The judge still remained here at court. The next thing that I heard from it Judge Harrell notified me that he and Echols were to meet on certain morning at my house and draw writings for the land. At the time the writings were drawn some three or four thousand dollars were paid to Mr. Echols, as I think. Mr. Echols, Judge Harrell, Mr. Ponder, and myself were present. The amount of money paid was, I am pretty certain, thirty-one hundred dollars. The reason I could not sell the lands was because there were rumours in the country about the title to the lands. I don't know that I even talked with Judge Harrell about these rumours. The rumours were rife through the country. After the papers were signed we left for Cuthbert court, and Judge Harrell told me I could have the Perry place by doing certain services. Don't know how the Perry and Snelling places were valued at the time of the sale by Echols to Judge Harrell.

(During the examination of Mr. Harrell, defendant's counsel ob-

jected to so much of the testimony as related to the sayings of Echols and Blackburn.)

Cross-examined:

128 Mr. Jarrell was a man of large property about the time of the sale. Don't know how long Echols have been with Jarrell—some. Echols was a good business man. Think his services as clerk for Jarrell were worth fifteen or eighteen hundred dollars per year. After this sale I was acting as attorney for Echols. After the sheriff's sale I never knew Jarrell to claim this property. From what I learned Jarrell and Echols say, Echols controlled the land after the sale. I was frequently at the store of Jarrell. When I say Judge Harrell was at the sale I mean that he was in town. Don't remember seeing him at the sale. He lived at that time in Webster County. The rumour was that Jarrell had acted the rascal all through, and that the titles to the property was void. Never heard any one say that the sheriff's sale was void before the purchase by Judge Harrell. I never heard anything against Echols until about the time that he went away from here. Jarrell and Echols both recognized my right to sell after I was appointed agent by Echols. The whole consideration for the land and notes was
129 paid in cash the day the deed and papers were drawn. I seen Echols put the money in his pocket and carry it off. I don't know that Judge Harrell had ever heard of the rumours in regard to this land. At his, Judge Harrell's suggestion, I examined into the titles and advised him that he would get a good title. I think old man Jarrell was in possession before the sale of the Richland place. He remained in possession of that place after the sale, and exercised acts of ownership.

Re-examined:

Judge Harrell and myself are cousins. Have always got along very well together. We were intimate at the time of the sale.

Cross-examined again:

When I said that the rumours were rife throughout the country I meant that they were so about Lumpkin and where Jarrell lived, and through the eastern part of Stewart County. I don't know that I had heard this rumour outside of Stewart County before lately.

JOSIAH HARRELL.

And the said JOHN B. WILLIFORD, of about the age of twen-
130 ty-two years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, the solicitors for the complainant and defendants did carefully examine the said John B. Williford, who did thereupon depose, testify, and say as follows, viz:

I knew W'm L. Jarrell in 1867. I was clerking for him that year. I commenced clerking for him in the spring of 1866. In 1866 & 1867 he was selling dry goods and groceries and farming land on the place. He had a very pretty property. About here some considered him rich and some did not. He owned at that time the John D. Snellings place, then W. S. Perry place, and we knew the latter as the W. S. Perry places,—the Richland place, and, in 1867, the Clark place. In 1867, I think, he worked over one hundred hands. He did not buy many goods after the first stock of goods in the spring of 1866. He then bought a large stock in credit; did not replenish heavily after-

wards. He paid the hands on the places employed mostly out of the store; sold the goods to them at a very good profit—generally
131 fifty per cent. and frequently more. The hands, in 1866, traded out almost all their wages; only one or two had money paid to them, except those on the Richland place. They did not take out their wages so much in 1867. Mr. Jarrell borrowed from Mr. Saville thirty bales of cotton in 1867. (Counsel for defendants object to any testimony as to Jarrell's borrowing of money as irrelevant.) He borrowed some cotton from Mr. McKinion in 1865 or 1866; don't know how many bales. He also got cotton from John D. Snellings—sixty bales, as I recollect—in 1866, before I went with him. I knew of his borrowing money. He frequently borrowed of Chamberlain and Boynton and some of my mother. I heard W'm L. Jarrell frequently speak of his embarrassments. He frequently told me that if he broke again he did not intend to be left flat again without money as he was after the war. I knew A. H. Echols from the time he came to clerk for Mr. Jarrell, in the latter part of 1866, until he left. I was clerking with him for Mr. Jarrell. From what Mr. Echols told me, from his services, and from what I was getting, I think his services were worth about five hundred dollars per year. When he came to clerk for Mr. Jarrell he had a little money;
132 I don't think he had much, and don't know how much. He had been teaching school in Terrell County. I couldn't say whether or not he brought as much as one hundred dollars when he came to clerk for Mr. Jarrell. He bought no property except his clothes. Never heard any conversation between Echols and Jarrell after Echols purchased the land at sheriff's sale. I quit the employment of Mr. Jarrell in June, 1867, and know very little of Mr. Jarrell's transactions after that time. I think that Mr. McDonald, of Cuthbert, was Mr. Jarrell's actor in 1867, but can't state possitively.

Cross-examined:

The plantations owned by Mr. Jarrell in 1866 & 1867 were well stocked. I should estimate the value of the property on the places, including mules, &c., at between eight and nine thousand dollars. I think he had between thirty-five hundred and four thousand acres of land worth, at a small valuation, five dollars per acre. The amount of his indebtedness, that I knew of, was small. He paid Chamberlain & Boynton but did not pay my mother, but she has been paid. He owes me a small amount. Cotton, when he bought or got Snelling's sixty bales,
133 was worth between forty and fifty cents per pound. The year 1867 was disastrous to farmers; those selling in December lost money. Cotton was very low—about eight or ten cents—in December, 1867, and January, 1868. In January, 1867, cotton was very high, and contracts for labor were made on the basis of a high price for cotton, and wages were high. When I left Jarrell's employment Echols remained with him and staid with him during the balance of the year. When Mr. Jarrell told me that if he broke again he would not be left without money as he was after the war, it was in the spring of 1867. When I first went to clerk for Mr. Jarrell at that time, I think he owned three plantations and the stock of goods. His invoices showed that he owed in New York for the goods, I think, ten or twelve thousand dollars. I did not think then that Mr. Jarrell was preparing for bankruptcy, but thought Mr. Jarrell was on a firm basis and that he himself thought so. (Counsel for complainant objects to the witnesses stating what he thought or what he believed Mr. Jarrell thought.) The stock of goods was worth the amount of his indebtedness in New York, and was, I thought, a well laid in stock.

134 Re-examined:

Two of the places I know were paid for.

J. B. WILLIFORD.

And the said ANDREW J. SMITH, being about forty years of age, a witness for the defendants, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter in controversy aforesaid, the solicitors for the defendants and complainants did carefully examine the said A. J. Smith, and he did thereupon depose, testify, and say as follows, viz:

Bought a part of the plantation known as the Richland place, in this county, in December, 1868, from Mr. Josiah Harrell, who represented himself as the agent of W'm G. Bell. I bought, or contracted for three hundred and twenty-five acres at one dollar per acre. I either paid three hundred and twenty-five or three hundred and fifty dollars for it. I afterwards sold it to W'm N. Clements about the middle of 1869. He paid me six hundred dollars and a horse, worth about forty or fifty
135 dollars. I put him in possession of it. I knew of nothing wrong in the sale, and purchased the land bona fide; believed that I got a good title. When I sold the land I learned that there would be a lawsuit about it.

Cross-examined:

When I went to see the lands Mr. Bell was in his house, and he showed me the land. I made the trade with Mr. Harrell; did not talk with Bell about the trade. Bell was a son-in-law of old man Jarrell. Harrell said he represented Bell. I did not see that he had a power of attorney. The place was in a very bad condition when I bought it, and I thought two or three dollars per acre a very fair price. I thought I was making a good trade, or I would not have bought the land. The deed was signed in Mr. Josiah Harrell's house, in Webster County. I don't think that Echols was present when I got the deed. Mr. Bell gave me the deed, and I gave him the money in Webster County.

Re-examined:

Mr. Bell was in the house on the land, and his family, as he said, were in the house. He had some hogs and was very anxious to
136 sell me them, but I didn't want them; Mr. Bell was claiming the land. Nobody else was on the land claiming it as ever I heard of.

Counsel for complainant objected to the sayings of Bell.

Cross:

I don't know of Mr. Bell exercising any acts of ownership over this land, except that he said it was his, and that he said his family were living in the house.

Re-examined:

Bell had a deed to it from old man Jarrell.

Objected to by counsel for complainants.)

Cross:

Knew that he had a deed from the fact that he said so; know it now from having the deed in my possession.

A. J. SMITH.

And the said JEPTHA WHARTON, being about the age of fifty-two years, a witness for the defendants, and having been by me first cau-

tioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, the solicitors for the defendants and complainant did carefully examine the said Jeptha Wharton, and he did thereupon testify and say as follows, viz:

137 I knew Willis L. Jarrell, in his life-time. Before 1867 he was in possession of land of the value of twelve or fifteen hundred dollars. He told me he sold his place, which was near Dover, in Randolph County, for twelve hundred dollars, and that with the money he paid for the land known as the Richland place, which he bought at sheriff's sale, as the property of W'm L. Jarrell. (Counsel for complainant object to anything which Willis S. Jarrell told the witness.) I knew W'm S. Jarrell about that time. He was considered a rich man. Lands that were sold at sheriff's sale in 1867, were sold very cheap, and did not bring anything like their value. The Rutherford place in Webster County, about six miles from the Richland place, was sold in 1867, or 1868, and brought about one dollar per acre. There were five or six hundred acres in the place, or perhaps more. I knew a house & lot in Preston, Webs er County, known as the Hay place, sell at sheriff's sale in 1867, I think, but am not certain, it was in 1867 or 1868. It was worth one thousand dollars, and sold for fifty. I have known Judge Harrell since the war. He has been a man of property; has had money and a large amount of real estate.

Cross-examined:

138 I have been on the land of Willis S. Jarrell, about which I testified. He was living on it before the war, and I then went over the place in passing the place in 1867. He was living on the Richland place during the war I think, and lived there till he left the country. I did not see Mr. Jarrell sell the place near Dover. Don't know that he ever owned it. He lived on it. I don't know, of my own knowledge, that he got any money from the sale of the Dover place. I saw Mr. Willis S. Jarrell frequently at Preston. Never saw him have a large amount of money. He generally paid for what he bought. Don't know that he had money to pay for the Richland place, which he bought at sheriff's sale. I saw the Rutherford place sold; think it was sold in 1868. It was sold at private sale. Mr. Rutherford came here to Webster and sold it himself. He did not live there. A good deal of land has been rented through this country. The usual way of renting is to rent for a third of the corn and a fourth of the cotton; this would generally amount to about two $2\frac{50}{100}$ dollars per acre. Property was tolerably low in 1867, about where I lived in Webster. I did not travel about much to know what it was in other places. The stone-house

139 in Webster was sold at sheriff's sale. It had been levied on, as I understand, by the U. S. marshal, and was to be sold by him. The sheriff, as I understand, levied on it first. It was sold in 1867 or 1868.

JEPTHA WHARTON.

And the said THOMAS W. CLEMENTS, being about thirty years of age, a witness for the defendants, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, the solicitors for the complainants and defendants did carefully examine the said Thomas W. Clements, who thereupon did depose, testify, and say as follows, viz:

I know the place known as the Richland plantation. W. N. Clements, E. J. Prather, and I are in possession of that place. My brother, W. N.

Clements, is in possession of about one hundred and twenty-five acres of lot number one hundred and thirty-five, and of lot number one hundred sixty-seven; the balance of the land is in possession of Mr. Prather and myself. It was sold as the property of W'm L. Jarrell, in 1867. It was bought by Willis S. Jarrell. He was in possession of it after the sale. He did not sell it but deeded it to his children, W. G. Bell's
140 wife, and A. F. Clements' wife. Bell and Clements went into possession under their deeds. Bell and his wife sold to A. J. Smith. They were living on the place when they sold to A. J. Smith. By his tenant he went into possession in 1869. He sold to W. N. Clements, who took possession after he bought. A. F. Clements and wife sold to N. A. Clements in the fall of 1868. A. F. Clements and wife were living on the place when they sold to W. N. Clements. They moved on the place immediately after W. S. Jarrell made them a deed to it. He sold it to E. J. Prather and myself in January, 1869, for half cash and half in twelve months. He sold to us before taking possession for fifteen hundred dollars, which was near six dollars per acre. The improvements are worth more on this part than on the other, a good frame house being on it. I suppose it would cost about one thousand dollars to put up such a house. The storm did not effect this place quite so badly as it did the other place. I was acquainted with W. L. Jarrell about 1867. Don't know whether he had any property. He appeared to have plenty about him. I was at Dover once. He was living in a house there, but don't know much about the place. He moved to the Richland place
141 during the war. When I bought the Richland place I did so bona fide; thought I was getting a good title, and didn't know there was anything wrong about the sheriff's sale. After I bought the land I came to Lumpkin and went into Judge Wimberly's office, and he told me that there would probably be a lawsuit about it. This was the first time I had heard there was anything wrong about it. I had a talk with E. H. Beall about it. When I got the subpœna in this case I saw Mr. Beall's name on it, and not understanding about it I came to see him (Mr. Beall) about it. When I saw Mr. Beall my recollection is that he told me that I would have to go to Savannah to answer some questions about it. Don't recollect that he told me to go to see Judge Harrell & Col. Hawkins about it. I don't recollect telling him that the case was full of fraud, but that they could not prove it; don't think I made such a remark to Mr. Beall. If I said that, I got the information that there was fraud in it after I bought. I think that I can state to the examiner positively that I got the information after I bought; if I made
142 the remark to Mr. Beall. I think Mr. Echols lived on the John D. Snelling place after he bought it at sheriff's sale, when he was at home, and staid there while he was at home. Know very little about that place. I was in the office of Hawkins and Burke, in Americus, part of the time when R. J. Grimes' answer was made out. I don't know what became of the answer after it was made out, but my understanding was that he took his answer. When I lay down at night I left Grimes up reading a paper, which I understood was his answer. We went to Macon to swear to our answers. I think Mr. Grimes carried his answer.

Cross-examined:

I suppose I have known the Richland place ten or fifteen years—lived about one-half mile from it. After I came back from the war Willis S. Jarrell was living on the Richland place. Was not doing much that I knew of; was living on the place, and trading to it. He did not culti-

vate it but William L. Jarrell did. He had a horse and buggy which was all the property I knew of his having. I did not know there would be trouble about the land till after the sale. There were rumours
143 through the country about the property which I had heard. I was a witness to the deeds from W. S. Jarrell to his daughters. Didn't hear them read but read part of one of them. John W. & A. F. Clements are my cousins. W. N. Clements is my brother. When I bought from W. N. Clements I relied upon his warranty and thought he would make it good if the title failed. Think I would have given as much for a quit-claim deed as a warranty deed to the land, for I thought the sheriff's deed was good. I had heard that there was fraud in the sale. Some said the sale was good and some that it was not. There was considerable talk about it. There were two sets of improvements on the Richland place in October, 1867. I bought the place known as the Clements place. The improvements on the Bell place were the best at the time of the sheriff's sale. The injuries by the storm were after the sale, and injured the improvements on the Bell place much more than those on the Clements place. The Richland place, at the time of the sheriff's sale, including the Bell and Clement' places was worth, I suppose, twenty-five hundred dollars. The land was badly worn. I
144 suppose it would have cost two thousand dollars to have put the improvements on the two places. Bell and wife are living in Missouri, and have been told Clements and wife went to Missouri. She died there and Clements has come back. They went off with *with* W. L. Jarrell, as I understood it at the time. I knew when I bought these lands that W. L. Jarrell had a life-time interest in the houses on one place, but did not think of it at the time. Mr. Jarrell delivered the deeds to his daughters, as I recollect. I cannot state positively that I did not say to Mr. Bell what he has stated I said. I don't recollect saying what he says I said, and don't think I used the language. I didn't look at the paper Grimes was reading in Americus; I think it was his answer, but can't say positively. I was not present at the time of the sheriff's sale. Echols lived on the John D. Snellings place both before and after the sale. W. S. Jarrell is said in the family to be dead.

T. W. CLEMENTS.

145 LUMPKIN, STEWART COUNTY, GEORGIA,
July 27, 1870.

It being represented to the examiner, that all the subpœnas issued in the foregoing-stated cases have not been served, because of the absence of witnesses from their homes, it is, by agreement of counsel for complainant and defendants, ordered that the further examination of witnesses be postponed until Thursday, the eighth day of September next, and that the further examination be had and held at Americus, Sumter County, Georgia, and that complainant and defendants have leave then and there to examine all such witnesses as may be brought before the examiner.

N. A. SMITH,
Examiner.

AMERICUS, SUMTER CO., GEORGIA,
September 8, 1870.

In accordance with the foregoing order, the complainant and defendants have caused to come before me the following-named witnesses, to wit: Daniel McKinion, Jeptha T. Hopkins, Henry G. Feagin, James M. Clark, Evan J. Prather, and David E. Ponder, to testify and the truth

to say, on the part and behalf of the complainant and defendants
146 in the foregoing-stated cases.

And the said DANIEL MCKINION, being about the age of forty years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, the solicitors for the complainant and defendants did carefully examine said Daniel McKinnion, and he did thereupon depose, testify, and say as follows, viz:

I was acquainted with W'm L. Jarrell, of Stewart County; was a creditor of his; held a note against him for forty-three hundred and twenty-five dollars when he went into bankruptcy. This note was given for cotton I sold him. I think he had paid on the note four hundred and ninety-nine dollars. I held also an old debt against him for thirty-eight hundred and seventy-seven dollars. I was not present at the sale of the John D. Snellings place at sheriff's sale in October, 1867. Had a conversation with W. L. Jarrell about the sale after it took place.

(Counsel for defendant' object to any conversation between Jarrell and witness when D. B. Harrell was not present.)

He told me he had intended to give his father the Richland
147 place, but had ascertained that the debts against him would bind the place, if he made the deed, and so furnished his father with the money to buy the place at sheriff's sale to perfect the title in him. About the John D. Snellings place, he said he was involved in an old debt with a Mr. Prather, and that he had mortgaged the Snelling place to W. A. Rawson, and that this mortgage prevented this place from becoming subject to his new creditors, and that he had it levied on and gave the money to Mr. Echols to purchase the land. He said that the reason he did this was that he had not paid his old debts, and that he would be damned if he ever did pay them. He told me that I was aware from what he had previously told me that Echols was not able to purchase the land as Echols had been in his employ at six hundred dollars per year, and that he had to buy his clothes when he, Echols, commenced to clerk for him, Jarrell. He said that my debt was a new debt, and that he expected to pay me; that there were three parties he expected to pay—Mrs. Williford, Mr. Saville, and myself, as these were new debts. He said, I think, that he owed Mrs. Williford two hundred dollars, in gold; outside of these debts he said he did not expect to pay anybody. That was all the conversation. I was at his
148 house after the sale. His house was in the southeast part of Stewart County, on the John D. Snelling place. He remained at that place till about Christmas, when he left the country. He was sick a good deal of the time, and then staid at his father's. The Snelling place was looked upon as his house. He said in the conversation about the sale that the reason he wanted the Snellings place sold was to get rid of the mortgage of Rawson. He said that was an old debt, and that there might be considerable usury in it, and that he had the sale made merely to get rid of that debt. Jarrell did not pay me my claim, except the four hundred and ninety-nine dollars. This was paid in a trading transaction before the sheriff's sale. I don't know how many plantations he owned and worked that year; think he worked the place known as the Bill Perry place. I knew not much about any place except the Snelling place; think his father or Dr. Clements owned the Richland place. Never heard Jarrell say what became of his stock, and don't, of my own knowledge, know what became of the stock. Know nothing of Judge Harrell's being Jarrell's attorney.

Cross-examined:

149 The last debt of mine was contracted after Christmas, 1866—sold him cotton on a credit and took his note for it without security. I considered him good, and he was generally considered good; never made affidavit to prove my debt before the register in bankruptcy; never gave anybody written power-of-att'y to prove it. I became alarmed about my debt before he went into bankruptcy; had him arrested on bail-process, and he went down to Savannah, and filed his application for discharge in bankruptcy, and run away. I live in Stewart County; am one of the in the bills in these cases. Lands were tolerably low in Stewart County in 1867. Jarrell had a large amount of stock in hand besides these plantations. I don't know how much. The plantations were well stocked with mules, &c. In 1867, I think, but won't be certain whether then or 1866, he had a large stock of goods on hand; he also had some cotton on hand. Judge Harrell was not present at the conversation between Jarrell and myself; never told Judge Harrell about the conversation; none of the persons now owning the places were present, and I did not tell them of the conversation before they bought. May have conversed with some of them about it since. He told me

150 in that conversation that he intended to give the Richland place to his father and brothers-in-law so that they could live about his father; but that as he could not give them the land he sent some cotton to Columbus, and got some money for his father to buy the place with. He told me that he had roped Mr. Rawson in the sale, and that I had reason to rejoice at it, as I then had a chance to realize my money from the land. The conversation I had with Jarrell was brought about by my trying to get my money, and he promised to pay my new debt, but could never promise to pay the old debt. Neither Jarrell or Echols was married at that time. Echols staid at the Snellings place. Did not know Echols till he went to hire with Jarrell. Echols was in the employment of Jarrell, who was carrying on a big business. Old man Jarrell went, I think, to the Richland place early in the war; lived on it at the time of the sheriff's sale; don't know where he came from.

Re-examined:

I am not well acquainted with the John D. Snellings place; never have been over it; from what I know of the place I think five dollars per acre would have been a fair price for that place in 1867. I saw some cotton in his possession. He told me he had a considerable

151 amount of cotton in hand at the surrender, but I don't know that he had any. I think what he had on hand was bought from myself and others. He said he had destroyed the lien of Mr. Rawson's mortgage by the sheriff's sale. (Counsel for defendants object to statement of Jarrell not said in the presence of any of the defendants.) Echols was on the Snelling place in the employment of Jarrell, before the sale. When I saw Jarrell after the sale he was down sick and not able to be out of the house. Did not see him and Echols together after the sale. I know nothing of old man Jarrell's circumstances, except from hearsay.

D. McKINNION.

And the said J. T. HOPKINS, being about the age of twenty-two years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, the solicitors for the complainant and defendants did carefully examine the said J. T. Hopkins, and he did thereupon depose, testify, and say as follows:

I was acquainted with A. H. Echols, in 1867, I believe, in Randolph County near Brooksville. I heard him say he was getting six
152 hundred dollars per year from Mr. Jarrell. He said he was in the employment of Mr. Jarrell. (Counsel for defendants object to the sayings of Echols made not in the presence of any of the defendants.) Echols was at the time collecting for Mr. Jarrell.

Cross-examined:

I am now living with Daniel McKinnion; have hired with him two years, and a half. Before I hired with Mr. McKinnion, I lived with Mr. Prince about four months; before that I lived with Mr. Brinson, about four months; and before that with Mr. Jones, about seven months; before that with my father; left my father at eighteen or nineteen years of age. When I lived with Mr. Jones this conversation took place. It was in the fall of 1867. Had seen Echols once before at Mr. Jarrell's store. He was a man of medium size, and I think of light complexion. The conversation was between Echols, a brother-in-law of mine, and myself. We were talking of Jarrell how he had made his money, and how rich he was, and we asked him what his salary was. He did not tell us how long he had lived with Mr. Jarrell. Judge Harrell was not present.

J. T. HOPKINS.

153 HENRY G. FEAGIN, re-introduced:

(Counsel for defendants object to his renomination upon the ground that his evidence was closed. Counsel for complainant state that they wish to examine only as to a particular point as to which they omitted to examine, and of which they did not know that he had any knowledge.)

Don't know, of my own knowledge, what became of his stock or Jarrell's plantations. I heard both Jarrell and Echols say that they were carried to Alabama and disposed of.

(Counsel for defendants object to sayings of Jarrell and Echols, made when none of the defendants were present.)

Mr. Echols told me that he carried off the stock. He told me that he carried off the stock, and that a brother of mine acting as sheriff of Barber Co., Alabama, arrested him. He told me that he dodged me and saw me in the county, and was under the bed in Mr. Jarrell's, in Stewart County, to get out of my way; said he was acting under an assumed named in Alabama. My brother, acting as sheriff, was named Israel B. He said he sold the mules in what was then Barber County. He told me what he got for the stock; it was a small
154 price. The stock was in bad condition. This was in conversation between Jarrell, Echols, and myself. I heard a conversation between Jarrell and Hull about these mules. Mr. Hull asked Mr. Jarrel for the money for the mules he had sold him. Jarrell said he did not have it. After Hull left, Jarrell told me that the mules Echols had sold were some of the same he had bought of Hull. He seemed to be elated at the idea of getting the mules without their having cost him anything. Mr. Echols was not present while Mr. Hull was there; did not show himself until Mr. Hall went off. (Counsel for defendants object to the sayings of Jarrell & Echols because of irrelevancy, because Echols is a competent witness, and all the testimony is hearsay.)

Cross-examination:

I have no interest in this suit. I had the above-stated conversation with Echols the day after he got back. Don't recollect exactly the time.

Echols told me, I think, what he got for the mules per head. I think there was then an execution vs. Jarrell, and I think I had it my hands,
but am not certain. There was plenty of other property to sat-
155 isfy the fi. fa. I don't know why he dodged me when I was in
Alabama. I was not after him, but was there on private business. Did not hear Jarrell complain that Echols had taken the money and kept it.

Re-examined:

I can't say positively in whose hands the execution was at the time of the sale. I had the execution some time, but can't say when. I think Col. Morrill controlled that judgment.

Re-cross:

I don't know why Echols dodged me. Had nothing against him or Jarrell either.

H. G. FEAGIN.

And the said JAMES M. CLARK, being about the age of forty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, the solicitors for the complainant and defendants did carefully examine the said James M. Clark, and he did thereupon depose, testify, and say as follows, viz:

I know William L. Jarrell. Judge Harrell appeared as counsel for
W'm L. Jarrell in a case before Judge Vason, in Albany, in which
156 I was complainant and Jarrell defendant. It was a case in equity.
The time Judge Harrell appeared there was during the December term, 1867. I think during the second week of December. I filed the bill and Jarrell answered it. I am not certain what attorney wrote out the answer. I thought at the time it was Judge Harrell, and am still of that impression. In coming from Albany I had a conversation with Judge Harrell about the case, and endeavored to get him to have Jarrell compromise with me, and told Judge H., in that conversation, that Jarrell was irretrieveably and hopelessly broken, and that he had better secure his fee, and he told me he had done that before he went to Albany.

(Counsel for defendants object to any testimony as to Jarrell's employing Judge Harrell in any other case than one pertaining to the matter now in controversy as irrelevant.)

I had a conversation with W. L. Jarrell after the sheriff's sale. Went to his house and staid all night with him. He owed me quite a large amount, and I went to see him to try and secure it.

(Counsel for defendants object to any testimony as to the conversation, as Jarrell is a competent witness and it is hearsay.)

157 He said that the title to the lands sold at sheriff's sale had
passed out of him, Jarrell, so effectually, by the sale, that W. A. Rawson could never get his money. He did not disclose to me his object in having the property sold. He told me of what he did on the day of the sale. I can't recollect any particular line of conduct, except that he stated that Rawson had defeated himself by proclaiming that he had a mortgage on the place. When I got there he, Jarrell, appeared quite sick, but in talking of the matter he became excited and got up and sat by the fire; got almost well. He was at the Snellings place, but I think that he called his father's place his home. I think after he got sick he changed his home to his father's. I saw A. H. Echols several times after the sale. He told Silas Smith and myself, who overtook

Echols in the road going to the John D. Snelling place, that a portion of that place, a beautiful wood, belonging to Jarrell. This was after the sheriff's sale, and was said in answer to a question by Smith, who, I think, was a stranger to Echols.

(Counsel for defendants objects to sayings of Echols.)

I know that Echols was a clerk of Jarrell, engaged in attend-
158 ing to mercantile and plantation business for Jarrell.

Cross-examined:

The controversy I had with Mr. Jarrell was not about any of the lands now in controversy. I had sold him a plantation, stock, &c., and took his note for the same in, I think, December, 1866. I took his note secured by mortgage for the place and stock & crops, &c. The bill was filed in my case for injunction, &c., and the case to be heard before Judge Vason, in Albany, was for the violation of the injunction. Jarrell's answer was at that time before Judge Vason, and admitted great indebtedness, but was non-committed, as I recollect, as to his solvency. It is probable that some proof was introduced as to the value of the lands now in controversy. My impression is that Mr. Feagin valued the lands now in controversy at more than I expected he would. I sold Jarrell thirteen hundred acres of land. My recollection is that it was valued at eight thousand dollars; the balance of the twelve thousand dollars was made up of the stock, &c. I have no idea for what the land could have been sold for cash. When I saw Jarrell at his house, he did not set up any claim to the land, which had been sold
159 at sheriff's sale, but said that the title was effectually out of him, and that Rawson would never get a dollar.

Re-examined:

My recollection is that, in the investigation at Albany, we did go into the price of the lands, to wit, the Snellings place.

J. M. CLARK.

Counsel for complainant closed here for the present, with leave to examine such witnesses as may be hereafter brought before the examiner.

And the said EVAN J. PRATHER, being about the age of twenty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, the solicitors for the defendants and complainant did carefully examine the said Evan J. Prather, and he did thereupon depose, testify, and say as follows, viz:

I own a half interest in nearly half of the place known as the Richland place. I bought my interest of William Clements; paid him seven hundred and fifty dollars for it. Thomas Clements and I bought of William Clements, I think, after the middle of February, 1869.
160 It was a bona-fide trade on my part. I paid one-half cash and gave my note for the other half, due December 25, 1869. Mr. Shepard traded for the note, and I have paid nearly the whole of the note. I didn't know anything at all of their being any fraud in the sheriff's sale of the land in 1867. I thought when a sheriff sold anything it was always a good sale. I don't know of any fraud in the sale of the land to W'm Clements. So far as I know the sales were all fair. According to my remembrance, old man Jarrell moved to the Richland place early in the war. I have seen the sheriff's deed to the property to old man Jarrell. Old man Jarrell told me that he sold his property in Terrell County to W'm L. Jarrell, and, with the money received for that place, he bought the Richland place.

(Counsel for complainants objects to sayings of old man Jarrell.)

I recollect a little about the price of lands in 1866 & 1867 in Stewart County. They were low—would not have brought their value. I loaned some money and took a mortgage on land to secure me; consulted a lawyer, and he told me lands, if forced to sell, would not bring much. I went into possession of the lands when I bought them.

Cross-examined:

In 1867 & 1868 I lived near Richland. I had heard some little
161 about the rumours that old man Jarrell could not make a good title. The first I heard was that some parties, to whom W'm R. Jarrell was indebted, was going to levy on the land, and that the family would be thrown out. Afterwards I heard that Mr. Beall was assignee, and that he would try to get the land. I thought I was getting a good title and relied on the man from whom I bought; took a warranted title from him. Did not consider a warranted from Clements worth much. I believed that a sheriff's title was good. There was not, as I heard, much talk in the neighborhood about the fraud in the sale. I had never lost anything by Jarrell, and was not afraid of the land; paid about as much as the land was worth. Old man Jarrell had a wood shop and blacksmith shop on the place. He was also, I think, attending to the lands on the place. After I bought the lands I went to see Col. Wimberly *to see him* about the place, and he told me I would have some trouble about it, and I might possibly have said that I had heard of that before I bought, and have no reason to think I said it. It is a desirable place to me. If I had been uneasy about it, I could have sold it since I bought it. W'm Clements is in possession of a part of the W'm Bell part of the place.

162 Re-examined:

W'm Clements bought, I think, about Christmas, 1868. I don't recollect who told me the sale was fraudulent, or that any one did before Mr. Clements bought it. When I bought the lands I knew nothing about the sales being illegal.

Re-crossed:

Old man Jarrell left, I think, about Christmas, 1868. Frank Clements left, I think, about January, 1869.

E. J. PRATHER.

And the said DAVID E. PONDER, being about the age of thirty-seven years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, the solicitors for the defendants and complainant did carefully examine the said David E. Ponder, and he did thereupon depose, testify, and say as follows, viz:

I was present when A. H. Echols made Judge Harrell a deed to the John D. Snellings and Bill Perry places, in Stewart County. Josiah Harrell and I *am* the witnesses to the deeds. This was, I think, in 1868. I saw the deed from Echols signed, sealed, & delivered to Judge Harrell. Judge Harrell paid Echols for it in money, and, to the best of my recollection, *and* about four thousand dollars. It has
163 been some time since, and I disremember whether it was that amount or not. Judge Harrell was, at that time, as I thought, a man of money and means.

Cross-examined:

The deed was executed at the house of Josiah Harrell. I did not

hear any conversation in particular about the trade between Judge Harrell and Echols. I remember that there was one one-thousand-dollar bill among the money. I saw no other papers transferred to Judge Harrell at that time. I don't remember what day of the week; think it was on the day of Gen'l Grant's election. Don't remember of any other persons being present at the time except Judge Harrell, Josiah Harrell, and myself.

D. E. PONDER.

Re-examined:

I disremember the exact amount, and think it was about four thousand dollars.

D. E. PONDER.

AMERICUS, SUMTER COUNTY, GEORGIA,
September 8, 1870.

It being represented to the examiner that M. Gillis and W'm A. Rawson have been subpœn'ed to appear before the examiner and
164 testify in the above-stated cases, and they not being present, it is, by agreement of counsel for complainants and defendants, ordered that the further examination of witnesses be postponed until Wednesday, the fourteenth inst., and that the further examination of witnesses, on said fourteenth inst., be had and held at Preston, Webster County, Georgia.

N. A. SMITH, *Examiner*.

PRESTON, WEBSTER CO., GA.,
September 14, 1870.

It being represented to the examiner that M. Gillis, one of the witnesses subpœn'ed by the complainant, is unable on account of sickness to appear before the examiner at this time, it is, by consent of counsel for the complainant and defendants in the above-stated cases, ordered that the further examination of witnesses be postponed until Monday, the tenth of October next; and that the further examination of witnesses on said tenth October be had and held at Americus, Sumter County, Georgia.

N. A. SMITH, *Examiner*.

AMERICUS, SUMTER COUNTY, GEO.,
Nov. 10, 1870.

165 In accordance with the foregoing order, the complainant and defendants have caused to come before me the following-named witnesses, to wit, Malcolm Gillis, James L. Wimberly, W'm A. Rawson, and David B. Harrell, to testify and the truth to say on the part and behalf of the complainant and defendants in the foregoing-stated cases.

And the said MALCOLM GILLIS, of Lumpkin, Stewart County, Georgia, being about the age of thirty years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, the solicitors for the complainants and defendants did carefully examine the said M. Gillis, and he did thereupon testify and say as follows, viz:

I have been on the John D. Snellings place and the W'm S. Perry place in Stewart County. I was attorney for the fi. fa. under which the

Snelling and Richland places were sold at sheriff's sale, on the 1st Tuesday in October, 1867. The fi. fa. under which the property was sold belonged, at the time of the levy and sale, James Fitzgerald the second transferee. I, as attorney for Fitzgerald, represented
166 the fi. fa. against W'm L. Jarrell. While so acting, and before any levy, W'm L. Jarrell employed me as an attorney to represent him in arranging about his old debts. In this arrangement and employment by Jarrell, the fi. fa. belonging to Fitzgerald had to be paid, and he has received his money on the fi. fa. I do not object to state anything in regard to this transaction as attorney for Fitzgerald, as I don't know there was any confidential communication between Fitzgerald and myself.

(At this point Judge Lyon, counsel for Beall, assignee of W'm L. Jarrell, stated that, as said attorney, he did not object, but consented to the witnesses answering any question which might be asked him.

Col. Hawkins, as counsel for the defendants in these cases, objected to the confidential communications between witness and W'm L. Jarrell, stating that he represents the present holders of the land as purchasers under the parties who purchased the lands at sheriff' sale, and on the ground of public policy.)

I had the fi. fa. levied on the Snellings and Richland places.

Judge Lyon asked the following questions:

167 "At whose instance did you have the levy made?"

The witness answered: "Mr. Fitzgerald, the transferee, did not point out any particular property; but directed generally that the money should be made. As to the consultations that brought about the levy and who directed it, I decline to answer. I was not the attorney of Judge Harrell or either of the tenants in possession at the time *of* the levy was made, and I do not decline answering the question because I represented them then, as there was then no relation of client and attorney between myself and Judge Harrell and any of the tenants."

Judge Lyon asked the following questions: "Did you procure or cause the levy to be made as the attorney of W'm L. Jarrell?"

Witness declined to answer this question, on the ground that he obtained the information during the relationship of clients and attorney between himself and Jarrell and by means of that relation, and that he was privileged from answering. The same ground was stated as to his refusal to answer the other question.

Judge Lyon asked the following question: "Whose money paid for the places bid off at sheriff's sale, which was paid on the fi. fa.?"

Witness declined to answer the question, upon the same ground as stated before.

168 I knew A. H. Echols very well. He was in the employment of W. L. Jarrell at the time of the sale and before, as clerk and manager of said Jarrell. I did not know whether he had any means or not. I have known Judge Harrell a long time; have known him very well since 1857. I don't remember to have seen him at the sale. I did not know him as attorney of Jarrell before the sale. I know of no relation between Judge Harrell and Echols. I don't know how long after the sheriff's sale it was before the Freedmen's Bureau seized the property of Jarrell for the wages of the freedmen; think it was about a month; don't know who represented Jarrell before the bureau.

Cross-examined:

Thomas Clements, W'm Clements, and E. J. Prather live in Stewart County, and A. J. Smith in Webster. The Clements' lived over ¾ mile;

the other 1½ mile, and Prather ½ mile from the Richland place. They were raised near the place. Don't know where Dr. Clements live.

M. GILLIS.

And the said JAMES M. WIMBERLY, of Lumpkin, Stewart
169 County, Georgia, being about the age of forty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, the solicitors for the complainant and defendants did carefully examine the said James L. Wimberly, and he did thereupon depose, testify, and say as follows, to wit:

I was in Lumpkin and in the court-house when the lands sold at sheriff's sale as W'm L. Jarrell's were sold at sheriff's sale on 1st Tuesday in October, 1867. W'm L. Jarrell owed me between seven hundred and one thousand dollars. He stated to me that if the Snellings & Richland places sold on that day for a small price he would be able to pay the same, as he was to furnish the money to pay for them, and in this way would be able to pay me the amount due me, and asked me to assist him in getting the lands to sell for a small price. He asked me to state to the bidders at the sale that there was a fi. fa. in favor of John Yarborough vs. N. C. Alston, a former owner of the Richland place, and that it was a lien upon that place. I got up and stated to the crowd at the sale that there was such a fi. fia., and think I stated the
170 amount of the fi. fa., but don't now recollect the amount. I can't state the amount, but think it was for more than four hundred dollars. I think Willis Jarrell lived on the place at the time. I knew the Clements,' Smith, Prather, and the other claimants to the land. Thomas Clements—I can't state whether E. J. Prather was present at the time or not, but my impression is that he either was present at that time or he afterwards talked to me about the same matter, and I told him about the same thing—stated to me that he had either bought the Richland place or was about to purchase it; and I can't say whether he said he had bought it or was about to buy it in connection with somebody else. He asked me my opinion as to whether he would get or had a good title. I don't recollect from whom he said he was about to purchase, or from whom he had purchased. I told him that I thought the sheriff's sale was a fraudulent sale, and that if he had purchased he had got a bad title, or that if he was going to buy he would get a bad title, and I told him I had been employed by Mr. Bell, assignee of Jarrell,
171 to bring ejectment for the land. Mr. Clements replied that if he had bought, or if he did buy, he would make the money they had to pay back before the end of the litigation respecting the land. That he would not loose anything if he lost the land.

Cross-examined:

This conversation was after Jarrell went into bankruptcy, and after I was employed by Mr. Beall, assignee, to bring ejectment for the land. I have stated about all I know that will show fraud in the sale on the first Tuesday in October. Mr. Rawson was present at the sale. There was an execution in favor of Yarborough vs. Jarrell. I saw Mr. Rawson come running to the place of sale and make some announcement, but did not hear it. David B. Harrell was a responsible man, as I think, in 1867. Up to the time of the sale he, Jarrell, I thought, would pay me, but did not think he would pay all his debts. I think there was as many persons present at that sale as were usual at sheriff's sale.

J. L. WIMBERLY.

172 And the said W'm A. RAWSON, of Atlanta, Ga., being about the age of fifty years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, the solicitors for the complainant and defendants did carefully examine said W'm A. Rawson, and he did thereupon depose, testify, and say as follows, viz:

I was present at the sale of W'm L. Jarrell's lands, at sheriff's sale in Stewart County, Georgia, in October, 1867. I had a mortgage on the John D. Snellings place, made by W'm L. Jarrell for, I think, eleven thousand three hundred and odd dollars. No part of that mortgage has ever been paid. I saw that the land was advertised for sale before the sale. I had, I think, three interviews with Jarrell about the sale before it took place. Jarrell induced me to take the mortgage on this place to release the security on the debt originally given. Mr. Prather, the security, had died, and Mr. Jarrell said he wanted me to take a mortgage, so as to release Mr. Prather's estate. He told me how he got title, and that there were no execution, against him. After
173 seeing it advertised, I went to see Mr. Jarrell, and asked him what he was going to do about it; if he was going to let the land sell, and he said, by no means; that he was going to pay the fi. fa. and sum too, and that I need have no trouble about it, as I had told him that I did not want it to pass into other hands, under the sale, nor that it should be sold subject to my mortgage. I had a second interview with him, and he told me the same thing in substance that he did in the first interview. I confided in those representations, and I supposed my mortgage was older than the fi. fa., as he had told me there *was* no judgments against him. On the morning of the sale he came past my store, and I asked him if the land was to be sold, and told him I saw it still advertised. He replied that he was not going to let the land sell; that he was going right there to pay up the fi. fa. and stop the sale. My object in asking him was to be present at the sale, if it was to take place, and as he assured me the sale would not take place, I turned into my store, and about an hour after I heard the sheriff open the sale and offer this land for sale. I went
174 up to where the land was being sold and asked Jarrell why the land was being sold. He made some evasive answer, which I did not understand, and I immediately announced my mortgage, and that I should hold it over the purchaser at the sale. I don't think there were but two bids after this, and I made one of them. I could not say that Jarrell suggested to me to make the announcement; think he did. The land was cried only a short time after I got there, not long enough for me to think or act after I got there before it was knocked off. I have never been over the plantation, but have been along the road. Think the lands last year, when cotton was high, would have brought six or eight dollars per acre. I did not think Mr. Prather's estate was worth as much as the debt, nor did I think the land mortgaged was worth as much as the debt. Thought the lands were worth six or seven thousand dollars. The lands at the time of the sale I should think were worth, *at the time of the sale*, five or six dollars per acre.

Cross-examined:

175 The debt which Mr. Jarrell owed me was founded on a debt contracted before the war. I let him have executions on Dr. Alston, with which he bought his (Jarrell's) Richland place; think it was in 1859; can't tell how much the amount of the execution was. I

have proved this debt in bankruptcy, in May, 1868, I think. I have given in this debt and payed taxes on it, but have not paid twenty-five per cent. tax on it. I am under the impression that Jarrell had the W. S. Perry place, the two places he returned in bankruptcy and the two places advertised—the Snellings place and the Richland place. I think the places would average as much per acre as the Snellings place. The places were smaller. I bought the places sold at the sale of Jarrell's property by the assignee of Jarrell, in bankruptcy. I bought nine hundred acres, and paid, I think, between thirteen and fourteen hundred dollars for *it*. The places had been levied on as the property of Mark Holloman, under heavy executions against Holloman. The executions are still pressing the property, but I have never been sold out by them, and still hold the property. In one of the places a one-
fourth interest was not sold. Cotton went down very low late
176 in the fall of 1867, but I think it brought a fair price early in the fall, and in October. The reason I went to see Jarrell the second time was that I wanted to get some money on my claim, as it had been due for a long time. I looked upon Jarrell at that time as *been* good, and supposed he would pay me. Did not want the place should be sold, so that I should have to foreclose my mortgage. After I went to the sale and announced my mortgage, I made a bid, as I remember, which, of course, was less than Echols, bid. There was no agreement between Jarrell and myself that I should aid in making the land bring a small sum. If I had been right quick in bidding, I might perhaps have made after Echols, before the land was knocked off. I had relied upon what Jarrell had told me, that my mortgage was older than the judgment. I thought that it was necessary for me to give notice of my mortgage *for* to hold the lien of my mortgage. I knew there was a fi. fa. from seeing the advertisement, but supposed it was younger than my mortgage, as a year and a half had elapsed after the
mortgage was given before the sale. If I had known that the
177 fi. fa. was older than my mortgage, I should not allow the land to sell for less than its value. I was very much surprised when I heard the sheriff announce the land for sale, and was perhaps excited. The sale was made very quick. It was the shortest sheriff sale I ever attended. The Richland place was put up and sold immediately after. I think his father bought that place. I think the Richland place was sold very quickly, but not in so short a time as the other place. Judge Harrell was not present at any interview I had with Jarrell at his house. Judge Harrell might have been present at the time of the sale, but I don't recollect to have seen him there. He, Judge Harrell, lived at that time in Webster County, I think.

Re-examined:

I think Mark Holloman had owned the places I bought at the assignee's sale. The executions were against a firm of which Holloman was a member. I have bought one of them, and gave six hundred dollars for it. Another is still pressing the land for something more
than forty-two hundred dollars, principal. Another for five hun-
178 dred principal is still pressing it.

Re-cross examined:

I did not bid for the Snellings place, because I did not want it, as I did not want to buy the land. When the Richland place was put up I did not bid on it, and did not pay much attention to the sale, and don't recollect any announcement about liens being made. I was not interested in the sale of that land.

W. A. RAWSON.

Counsel for complainant announced closed.

Counsel for defendants introduced Malcolm Gillis. Counsel for defendant proposed to recall him and ask him a question.

Examiner decided that the counsel for defendant could not recall him, but must introduce him a' their own witness.

Examination by counsel for defendants:

I was present at the sale of Jarrell's property at sheriff's sale in Oct., 1867, when the John D. Snelling' place was put up. Mr. Rawson announced the lien of his mortgage, and I think Mr. Rawson made one bid after his announcement. I had made two bids on the land be-
179 fore the announcement was made. Echols & I were bidding against each other. After Echols' last bid the land was cried long enough for any one to bid. The sale was not a long one, but sufficiently long for any one to bid. The land was sold for seven hundred and twenty-five dollars. When the Richland place was put up I had made a calculation of the amount of principal, interest, and cost due on the fi. fa., and I up the land to the amount due on the fi. fa., together with the amount the Snellings place had sold for. I then announced that I was done bidding, and Mr. Rawson then bid on the Richland place, and raised it up three or four hundred dollars more than enough to pay the fi. fa.

Cross-examined:

Mr. Fitzgerald, the transferee of the fi. fa., was not present at the sale of the land that I remember of; don't know that he knew the land was to be sold on that day.

M. GILLIS.

And the said DAVID B. HARRELL, of Terrell County, Georgia, being about the age of thirty-eight years, and having been by me first
180 cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, the solicitors for the complainant and defendants did carefully examine said David B. Harrell, and he did thereupon depose, testify, and say as follows, viz:

I was the counsel of W'm L. Jarrell in a case commenced against him by James M. Clark. There was a motion in said case, the same being a bill in equity for injunction, &c., to attach Jarrell for contempt for violating the injunction, and I was then employed by Jarrell. The matter involved in the case was not concerning any of the lands involved in the litigation in favor of E. H. Beall, assignee of said Jarrell vs. myself and others in the circuit court of the United States. I bought the lands known in this litigation, known as the John D. Snellings place and W'm S. Perry place of A. H. Echols, about the 26th or 27th Oct., 1868, I think the 27th, for which I paid him in money, thirty-four hundred and sixty dollars for the two places. The John D. Snelling place I bought at one and a half dollars per acre. We reckoned that place
181 at sixteen hundred and forty acres, and we rated the Perry place at one thousand dollars. I had bought of Echols a day or two before a note on Grimes and Bramlett, given for eight bales of cotton for the rent of the John D. Snellings place for 1868. This note was payable to Echols or bearer, dated, as I remember, the last of 1867, or first of 1868, and due Nov. 15, 1868, given for the rent of the Perry place for 1868, and a note made by one W. J. Tompkins, payable to W. L. Jarrell or bearer, for five bales of cotton, dated Feb'y 8, 1868,

due Nov. 15, 1868, given for the rent of the W'm Snellings place not embraced in this litigation, for which three notes I paid him seven hundred and fifty dollars at the same time that I paid him for the land. The payment was made in currency—greenbacks. At the time I made this trade I had no notice or intention that there was any fraud in the sheriff's sale of 1867, if fraud there was, and did not know that there was any contest in relation to the titles to the land. The trade was a fair, open, honest transaction, and I thought I was getting a good
182 title to the land or I would not have bought it. Josiah Harrell came to me about that time and told me that A. H. Echols was trying to sell the John D. Snellings and the W. S. Perry places, and that he, Josiah Harrell, could buy the W. S. Perry place for one thousand dollars, and wanted to borrow of me the money to buy it with. I told J. Harrell that if Echols wished to sell both places, and if I could make a good trade with Echols I would buy both places, as I had the money to operate with, and told Harrell to go to the clerk's office and examine the titles and see if they were good. I told Harrell that if I bought both places he could have the Perry place at what I gave for it. Harrell reported me that the titles were good. About the time the rent expired I went to the places to get possession. Grimes refused to give possession of the John D. Snellings place, and Davis refused to give me possession of the Perry place. They pretended to hold the places
183 under E. H. Beall, assignee of W'm L. Jarrell. I commenced legal proceedings against them both, to recover possession of the places, and to recover the notes I had bought of Echols against them. After defending the case against him for some time, Grimes delivered possession to me of the John D. Snellings place, and paid me the note I had against him for rent. He paid, I think, about nine hundred dollars, and I rented the place to him, for 1869, for eight bales of cotton. Davis after litigating a short time delivered to me possession of the Perry place, but did not pay me the note I had bought of Echols against him, and I have the note, not having been able to collect it of him; and I rented the place, for 1869, to one Tompkins for five bales of cotton. About the first of November, 1868, I notified Grimes and Davis that I held the notes they had given to Echols for the rent of these places, and they made no pretence than that they did not hold the places as tenants of Echols. In 1867 and 1868 I bought several places, and lands were remarkably low. At forced sales they brought hardly anything.
184 I recollect that the Bell plantation, eight hundred acres, about equidistance from the Richland and Snelling places, about five miles from each, sold under a tax fi. fa. for two hundred dollars. This sale was in the summer of 1867. I bought a lot of land lying convenient to the Richland place, at sheriff's sale after due advertisement, for ten dollars the same year. I bought at the marshal's sale in Macon, I think in fall of 1867 or early in 1868, one-half lot for fifty-five dollars, and one-half lot for one hundred and fifty dollars. At private sale for cash I bought of one Rutherford seven hundred and fifty acres of land, about seven miles from the Richland place, and better land, for eleven hundred and twenty-five dollars, I think, early in 1868. I had no information or belief at the time I bought this land of Echols, that W'm L. Jarrell had any interest in this land, and knew nothing of him in connection with it, except that the titles came through him; did not know Jarrell in the trade. Echols and Jarrell were both unmarried
185 men. I was present when the answer of R. J. Grimes was drawn by Mr. Burke in the bill filed in this litigation against Grimes, myself, and others. Mr. Burke read over the bill to Grimes by sections

and took down his (Grimes') answers. After the answer was finished, Burke handed it to Grimes, who retained it, and kept it till we got to Macon where Grimes swore to his answer. It was mentioned at the table where the answers were drawn, that each man should take his answer and look it over before we got to Macon, and if there was any mistakes in either answer, they could be corrected. We swore to it before S. T. Bailey, U. S. commissioner in Macon. The answer was prepared in the law office of Hawkins & Burke, in Americus, seventy miles from Macon. The names in the affidavit were left blank until we got to Macon, I filled the blanks, and by mistake I put the name of Smith in the affidavit to Grimes' answer, but Grimes swore to the answer made out for him and which Mr. Burke had read over to him by
186 sections as it was written out. About the close of last year I went to Grimes for my rent for 1869, and to see about making some disposition for renting the place for this year. He asked indulgence on the rent, which I gave him, and said he desired to rent the place again and offered me the same rent he had been paying, and I asked him thirteen bales of cotton rent for this year. He rose to twelve bales, but I still insisted on thirteen, and he asked me to give him a day to look for hands and to come down next day and *I* would give me an answer. I told him I would either come or send the next day, but that I would not take less than thirteen bales. I could not go next day but sent Josiah Harrell to see him, and if Grimes would give the thirteen bales to rent him the place, and if he would not to inform him (Grimes) that he could not have the place. Harrell went down, and when he came back he informed me that Grimes said he would take the place at thirteen bales. *Not* until about the middle of April I supposed
187 Grimes was my tenant on the place, when the sheriff served me with a bill of injunction, filed by Grimes, enjoining me from disturbing him in the possession of the land or from collecting the rent due; and I did not know till 26th of July last, when I heard Henry G. Feagin testify in this litigation in Lumpkin that Grimes had attorned to him. I never rented the place to Feagin, and never knew him in connection with the land except as a witness.

Cross-examined by solicitors for complainant:

I have never seen the bill and answer in the case filed by James M. Clark vs. W'm L. Jarrell, since the case was heard the last of 1867, or first of 1868. Complainant had moved an attachment vs. Jarrell, and, I think at the same time I moved to dissolve the injunction, or as to the attachment. The nature of the case as I recollect, was, that James M. Clark had sold Jarrell a plantation & stock and had taken a mortgage on the plantation, the stock, and the crop. Clark and Jarrell had, as I remember, recanted the trade. Jarrell had given up the deeds to
188 the land and the stock he bought of Clark, except some stock which had died, and in the settlement had given Clark his note for some fifteen hundred or two thousand dollars. This note was given without security, and Clark filed his bill vs. Jarrell to restrain him from removing the crop from that place he had taken back, or from any other of Jarrell's places. An injunction had been granted, and the motion for contempt was for removing the cotton contrary to the injunction. The motion for contempt was against Jarrell and Echols, but I don't think the bill was filed against Echols, as, according to my remembrance, Echols justified upon the grounds that he acted under the orders of Jarrell. There was an investigation before Judge Vason as to whether Jarrell and Echols were guilty of contempt. Echols was present at the investi-

gation. I don't recollect whether he filed a written answer or was examined orally. The bill charged Jarrell's insolvency and the answer denied the insolvency. Echols was discharged on the motion against him for contempt. I was employed by Jarrell to file his answer to this bill for a fee of five hundred dollars. I had the fee all in my hands
189 at one time in February or March, 1868. I borrowed that amount of him at that time. About a month or six weeks afterwards Jarrell told me that he was pressed for money and told me that he wanted some *some* money; that I could keep two hundred and fifty dollars and he would pay me the balance as soon as he could. He has never paid me. This is the only case which I have ever represented Jarrell since the war. I had made some collections for him before the war. I once stood his security on a claim bond and may have written out the claim papers, but not as his attorney. I have not been in the practice of the law since the war, and only represented Jarrell in the contempt and injunction case at his earnest solicitation. I still own the Rutherford place the lot of land I bought at sheriff's sale adjoining the Richland place. I have not sold any other lands I bought except one place in Terrell which I bought for my brother-in-law. I became acquainted with Mr. Echols in 1867. I lived in 1868 about sixteen or eighteen
190 miles from the Snellings place. I have known Jarrell for about ten years, I suppose. I don't think I saw Echols about the purchase but once before the sale was consummated. I bought the notes and the land at the same time, but did not have the money to pay at the time. I sent my brother to get two thousand dollars to make up the amount paid for the land. I paid Echols forty-two hundred and ten dollars for the land and notes. At the time I traded for the lands I had no deeds before me, but when I paid for the lands and notes I had before me the sheriff's deed to Echols to the Snellings place, and Jarrell's deed to Echols to the Perry place. I had heard before that Echols had bought the Snellings place at sheriff's sale. Jarrell and Echols had told me about that sale. I was in Lumpkin at that time the lands were sold, but was not at the sale. I don't know whether I seen the sale or not; don't recollect what I went to Lumpkin for on that day. I went there frequently, and then lived fourteen or fifteen miles from Lumpkin. I recollect that the land was sold on that day
191 from hearing that Jarrell's land was sold that day; don't recollect who I heard speak of it. Did not hear of the circumstances of the sale, nor of any trick that Jarrell had played upon Rawson, and did not hear anything about Rawson's mortgage. Lumpkin is a small town. The court-house is in the centre of the square, and the business houses are on three sides of the square. The business houses are in sight of the court-house. The matter of the possession of the lands is now in litigation between Grimes and myself. In the litigation between Grimes and myself, in 1868 & 1869, I had enjoined Grimes from selling his cotton, and he came to me and said he could not carry on the place without selling his cotton, and I told him if he would pay me I would dismiss the injunction; and as he had started a crop, I would let him have the place for the same rent for 1869. I rented the Perry place to Tompkins, for 1869, for five bales of cotton, which he has not paid. Dr. Gregory and Tompkins are in possession, as my tenants, now, at the Perry place. I rented it to Dr. Gregory for five bales for this place. I
192 don't know how much open land, on either place, as I never have been on either place. A good deal of land has been opened on each, and worn out and grown up. I suppose, from information from

my tenants, there are about one hundred and fifty acres open and tillable land on the Perry place, and three or four hundred on the Snellings place. I think Jarrell left Stewart County in April or May, 1868. From what I heard, it was some days after Jarrell left before Echols left. I don't know where Jarrell went or Echols, except that Echols told me when he came back that he had settled in Omaha, in business, and wanted money badly, and wanted to sell the land and notes. I have not heard from Jarrell since he left the country, except from rumor. I heard that Jarrell had gone into bankruptcy about the time he left here; heard that he had filed his petition in bankruptcy; can't tell who I heard it from. It may have been from Jarrell himself.

Re-examined:

When I went to see Jarrell about the first of November, 1867, I went to collect a lumber account; Jarrell and Echols were both on the place.

193 They told me of the sheriff's sale, and that Echols had bought the property, but was allowing Jarrell to remain on the property till he gathered the crop. This was after the first of November, and I think before the examination at Albany, before Judge Vason; Jarrell paid me his lumber account of about five or six hundred. The time I made the bargain with Echols for the land and notes was some four or five days before the deeds were made, and the bargain for the land and notes was made on the same day.

DAVID B. HARRELL.

AMERICUS, SUMTER COUNTY, GEORGIA,
Oct. 11, 1870.

The solicitors for the complainant and defendants agree that the examiner may examine Frank E. Burke at such time as he may deem proper before transmitting the testimony to the clerk of the circuit court.

N. A. SMITH,
Examiner.

AMERICUS, SUMTER COUNTY, GEORGIA,
November 21*st*, 1870.

In accordance with the agreement of solicitors for complainants and defendants, I have caused to come before me Frank E. Burke, to

194 testify, and the truth to say, on the part and behalf of the complainant and defendants in the foregoing-stated cases.

And the said FRANK E. BURKE, of Americus, Sumter County, Georgia, being about the age of twenty-six years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Frank E. Burke and he did thereupon testify and say as follows, viz:

As a member of the firm of Hawkins and Burke, I made out the answer of R. J. Grimes in the case of E. H. Beall, assignee of W'm L. Jarrell, bankrupt, vs. David B. Harrell, et al., Harrell, Grimes, and the other defendants came into our office in Americus, and I think the first thing I did, I read copy of the bill filed in the case, to them. I prepared one of the other defendants' answer before I did Grimes'. This first answer was finished about night. Grimes then asked me to let him take the copy of bill in the case and let him look it over carefully,

195 so that he might be prepared to answer. He took the bill and kept it either until the next morning, or until after supper; my

impression is that Judge Harrell commenced Grimes' answer and wrote the formal part of it, and that he, Judge Harrell, suggested to me that I had better finish it as it was an important answer. Grimes sat down by me and I read over to him each charge in the bill, and he stated his answer to each charge, and I wrote down the facts as he stated them. I am very positive that the facts are set forth in the answer just as he stated them to me. I was very particular in regard to that part of the answer relating to the renting of the place from Jarrell, as the agent of Echols. Grimes, in answering the repeated questions in the bill about that renting, with some strong expression, said he reckoned they would get the truth of that after a while. I questioned Grimes very particularly in regard to this part of his answer, and he stated very positively to me that Jarrell rented the land to him as the agent of Echols, and that Jarrell told him, Grimes, before the signing the note that he was renting the land as the agent of Echols; that Jarrell frequently spoke of acting as the agent of Echols in renting the place, and
196 he, Grimes, supposing Jarrell was acting as the agent of Echols, gave his, Grimes', obligation to Echols for the rent. The whole answer was made out strictly in accordance with the facts as related to me by Grimes while preparing the answer. After I had finished the answer I think I read over the answer to him. I gave him the answer and told him to look it over, and if there were any corrections to be made to make them, as he had to go to Macon to swear to it.

FRANK E. BURKE.

UNITED STATES OF AMERICA,
Southern Dist. of Georgia,
Americus, Sumter Co., Ga., ss:

I, N. A. Smith, examiner, duly appointed by the circuit court of the United States for the southern district of Georgia, under the rules of equity in courts of equity of the United States, to examine witnesses in the cases of E. H. Beall, assignee of W'm L. Jarrell, bankrupt, vs. David B. Harrell & R. J. Grimes, and E. H. Beall, assignee of W'm M. Jarrell, bankrupt, vs. Andrew J. Smith and Thomas J. Clements, the said causes being in equity in the circuit court of the United States for the
197 southern district of Georgia, did examine as witnesses in said causes, the solicitors for the complainant and defendants having first signed an agreement that the testimony taken down by me as examiner might, so far as the same was applicable, be used in each and all of the cases, which agreement is herewith returned with the evidence, Henry G. Feagin, E. H. Beall, Josiah Harrell, John B. Williford, Andrew J. Smith, Jeptha Wharton, and Thomas W. Clements, at Lumpkin, Stewart County, Georgia, on the 26th and 27th days of July last; and David McKinnion, Jeptha T. Hopkins, Henry G. Feagin, James M. Clark, Evan J. Prather, and D. E. Ponder, at Americus, Sumpter County, Georgia, on the 8th day of September last, and Malcolm Gillis, James L. Wimberly, W'm A. Rawson and David B. Harrell, at Americus, Sumpter County, Georgia, on the 10th & 11th days of October last; and Frank E. Burke, at Americus, Sumter County, Georgia, on this day; that I attended at said examinations, except the last, which, by consent of solicitors for complainant and defendants, was had before me alone, by the solicitors for the complainant and defendants and by the wit-
198 nesses named, who were of sound mind and lawful age; and the witnesses having been by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions having by me been reduced to writing in

the presence of the witnesses, and from their statements, and after carefully reading the same to each witness as he testified, each witness subscribed to his own testimony in my presence. I have retained the said depositions in my possession for the purpose of subscribing the same with my own hand and transmitting the said depositions to the said court for which the same were taken.

I do further certify that the foregoing one hundred and thirty-one pages contain the evidence of the said eighteen witnesses thus taken by me.

And I do further certify that I am not of counsel or attorney for either of the parties in the said depositions and captions named, nor in any way interested in the event of the causes named in the said captions.

In testimony whereof I have hereunto set my hand and seal
199 this the 21st day of November, in the year of our Lord eighteen hundred and seventy, and of the independence of the United States the ninety-fifth.

N. A. SMITH, [L. S.]
United States Examiner, duly appointed by the Circuit Court of the United States for the Southern District of Georgia, in the Fifth Circuit Court of the United States.

200 *Order to dismiss as to Echols, Bramlett, and Davis, and hearing as to Harrell and Grimes.*

And afterwards, to wit, on the 12th day of May, A. D. 1871, the following order was entered up, in the words following, to wit:

It appearing to the court that there has been no service of the defendants Alfred H. Echols and Andrew J. Bramlett, and that James K. Davis, although served with a copy of subpœna, is a merely formal party, being only a tenant of the persons under rent for the year 1868, and that he is wholly insolvent, and have made no answer or appearance:

Ordered that the cause be discontinued as to defendants Alfred H. Echols, Andrew J. Bramlett, and James K. Davis, without prejudice to complainant; and that the said cause proceed to a hearing as to the other defendants, David B. Harrell & Robert J. Grimes, as set for hearing, the evidence in said cause having been closed and published.

In open court, May 12, 1871.

JOSEPH P. BRADLEY,
Asso. Justice Sup. C't U. S.

201 *Decree.*

And afterwards, to wit, on the 20th day of May, A. D. 1871, the following decree was made in the words following, to wit:

ELISHA H. BEALL, ASSIGNEE OF W'M L. JARRELL, bankrupt,
vs.
DAVID B. HARRELL AND R. J. GRIMES.

This cause came on to be heard at the present April term, 1871, of the circuit court, and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed that the sale by the sheriff of Stewart County in this State, on the first Tuesday in October, A. D. 1867, of the place known as the "John D. Snellings place" to one A. H. Echols, as the property of W'm L. Jarrell, under

an execution from the superior court of Stewart County, in favor
202 of Jeremiah Culpepper against said W'm L. Jarrell, assigned to James Fitzgerald, containing sixteen hundred and ninety (1,690) acres, situated in the nineteenth district of said county of Stewart, and known as lots numbers one hundred and thirty-one, (131,) one hundred and thirty-two, (132,) one hundred and thirty-three, (133,) one hundred and fifty-six, (156,) one hundred and fifty-seven, (157,) one hundred and sixty-five, (165,) one hundred and fifty-eight, (158,) seventy-one acres off of north half of lot one hundred and twenty-four, (124;) north half of lots one hundred and twenty-five, (125,) and north half of lot one hundred and twenty-six, (126,) and the west half of lot one hundred and sixty-four, and the deed made under said sale by the said sheriff to the said A. H. Echols on said day; that the deed from the said W'm L. Jarrell to the said A. H. Echols under date of October seventh, (7,) A. D. 1867, to the place in said county of Stewart, known as the said
203 William S. Perry place, containing six hundred and eighty acres, (680) *acres*, and the deed from the said A. H. Echols to defendant David B. Harrell, for the said John D. Snelling place and the said William S. Perry place, dated the twenty-sixth (26) day of October, A. D. 1868; and the transfer by the said A. H. Echols to said defendant David B. Harrell, of the rent obligations of R. J. Grimes and A. J. Bramlett, and of J. K. Davis for the rent of the said John D. Snelling and the said William S. Perry places for the year A. D. 1868; and of W. J. Tompkins rent *of* obligation for the Bill Snelling place, and each and every of them null and void; and that the said defendant David B. Harrell delivered to the complainant, E. H. Beall, assignee, the rent obligation of J. K. Davis for seven bales of cotton, due November 15th, A. D. 1868; and that the said David B. Harrell pay to E. H. Beall, assignee and complainant, the sum of nine hundred dollars, with interest thereon from the 15th day of November, A. D. 1868, being the
204 amount received by him on the rent obligation of R. J. Grimes and A. J. Bramlett for the rent of the John D. Snelling place for the year A. D. 1868, and that he also pay to the said complainant whatever sum of money he received or collected from W. J. Tompkins on his said rent obligation for the rent of the Bill Snelling place for the year A. D. 1868; that the said defendant R. J. Grimes account to the said complainant for the rent of the John D. Snelling place from the first day of January, A. D. 1869, to the time he had ceased to cultivate the same; and that the said defendant David B. Harrell account to the said complainant for the rents received by him from the William S. Perry place since the first day of January, A. D. 1869, to the present time.

And it is further ordered and decreed that the title to, and possession of the said John D. Snellings and William S. Perry places, vest in the complainant, Elisha H. Beall, assignee of W'm K. Jarrell, bankrupt, and as a part of the assets of said bankrupt's estate, to be by him administered according to law, after the payment by him from the
205 proceeds thereof of the whole of the expenses of this proceeding.

And it is further ordered and decreed that the complainant pay the whole of the costs of this proceeding, to be taxed by the clerk of this court from the proceeds of the sale by him of the property embraced in this decree, or from any collections made by complainant from defendants in pursuance of this decree.

In open court, May 20, 1871.

JOSEPH P. BRADLEY,
Ass'o Justice Sup. C't U. S.

Order to appeal to Supreme Court U. S.

Whereupon the following order was granted in the words following, to wit:

A decree having been this day rendered in the above-entitled cause against the defendants, the said David B. Harrell, requiring him to cancel and deliver up the deeds and other papers connected with the purchase by him of certain tracts of lands enumerated in the bill of complaint, and the rents due for the same, and adjudging the
206 said lands to the said complainant, assignee, the said defendant David B. Harrell, now in open court, giving notice, and praying an appeal to the Supreme Court of the United States, said appeal is hereby allowed, and the records, transcript, and proceedings in said cause, duly authenticated, will be transmitted to the Supreme Court of the United States.

In open court, May 20, 1871.

JOSEPH P. BRADLEY,
Ass'o Justice Sup. C't U. States.

Bond on appeal.

And afterwards, on the 30th day of May, A. D. 1871, came the defendant, by his counsel, and filed his bond, duly approved by the district judge, in the words and figures following, to wit:

Supreme Court of the United States.

ELISHA H. BEALL, ASSIGNEE OF W'M L. JARRELL, bankrupt,
vs.
DAVID B. HARRELL, ET AL.

207 Know all men, by these presents, that we, David B. Harrell, as principal, and Francis M. Harper, as security, both of the county of Terrell, and State of Georgia, are held and firmly bound unto Elisha H. Beall, assignee of W'm L. Jarrell, in the sum of five thousand dollars, to be paid to the said Beall or his successor, as assignee; to which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 26th day of May, 1871.

Whereas the above-named David B. Harrell hath taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled cause by the circuit court of the United States for the southern district of Georgia:

Now, therefore, the condition of this obligation is such, that if the above-named David B, Harrell shall prosecute his said appeal to effect and answer all costs and damages if he shall fail to make
208 good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

DAVID B. HARRELL, [L. S.]
FRANCIS M. HARPER, [L. S.]
Both by their att'ys-in-fact, ARTHUR HOOD.

Signed, sealed, & delivered in presence of—

Approved.

JOHN ERSKINE,
U. S. Dist. Judge, Dist. of Georgia.

ATLANTA, G'A, *May* 26, 1871.

Clerk's certificate.

UNITED STATES OF AMERICA,
Southern District of Georgia:

I, James McPherson, clerk of the fifth circuit court of the United States for the southern district of Georgia, do hereby certify that
209 the foregoing two hundred and eight pages of writing contain a full, true, and complete copy of the state of the pleading, the statement of facts, and of the proceedings in the above-named cause, as they remain of record on the records of the said circuit court.

In testimony whereof I have hereunto set my hand, and affixed the seal of the said circuit court, this tenth day of October, A. D. 1871.

[SEAL.] JA'S McPHERSON,
Clerk of the Fifth Circuit Court of the U. S., So. Dist. of Georgia.

(Indorsement on cover:) No. 502. David B. Harrell, appellant, vs. Elisha H. Beall, assignee of William L. Jarrell, bankrupt. S. Georgia C. C. U. S. Filed 8th December, 1871.

Supreme Court of the United States.

DECEMBER TERM, 1872

DAVID B. HARRELL, *Appellant*,
vs.
ELISHA H. BEALL, *Assignee of* WILLIAM L. JARRELL, *Bankrupt, Appellee.*
No. 257.

BRIEF FOR APPELLANT.

Supreme Court of the United States.

DAVID B. HARRELL, *Appellant*,

vs.

ELISHA H. BEALL, *Assignee of* WILLIAM L. JARRELL, *Bankrupt, Appellee.*

Appeal from the Circuit Court of the United States from the Southern District of Georgia.

STATEMENT.

The bill was brought by appellee against appellant; Alfred H. Echols, R. J. Grimes, Andrew J. Bramlett, and James K. Davis. Echols and Bramlett not having been served, and Davis being a merely formal party, the cause was discontinued as to them, and went to a hearing as to Harrell and Grimes only.

The bill alleges that Jarrell was declared a bankrupt February 25th, 1868, and complainant Beall was his assignee; that Jarrell was largely indebted; that his scheduled property was insufficient to pay his debts; that, to defraud creditors, Jarrell, on the 29th of August, 1867, procured the Sheriff of Stewart County to levy an execution from the Superior Court of said county against him, founded on a judgment at October Term, 1860, on a tract of land of 1,690 acres owned by him, and known as the "John D. Snelling place," and to sell the same under said levy, at public sale on the first Tuesday in October, 1867, when it was bid off by Echols, who was Jarrell's clerk and agent, for seven hundred and twenty-five dollars, though at a fair sale it would have brought much more; that at the time of the sale Jarrell was indebted to one Rawson over eleven

thousand dollars, secured by mortgage on the same land, which mortgage was of inferior lien to that of the execution, being younger in date—a fact of which Rawson was ignorant; that Jarrell had assured Rawson that the land would not be sold, but Rawson, happening to discover that the sale was going on, went to the place of sale, and was induced by Jarrell to announce that the land would be sold subject to his mortgage, and the land was then knocked off to Echols; that Jarrell also procured to be sold at the same time, and under the same execution, another tract of land known as the "Richland place," and by fraudulent practices caused it to bring much less than its value; that this place was bid off by his father; that the same money was used in paying for both places; and that the residue of it, after paying off the execution, was paid to Jarrell; that Jarrell remained in possession of the "John D. Snelling place," after the sale, until January or February, 1868, when he rented it to defendants, Grimes and Bramlett, but took the obligation for rent payable to Echols.

That on the 7th of October, 1867, Jarrell conveyed to Echols another tract, known as the "William S. Perry place," of 680 acres, for the pretended consideration of thirty-four hundred dollars, which was not in fact paid; that he remained in possession after the sale, until January, 1868, when he rented it to defendant, Davis, and took the obligation for rent payable to Echols; that Echols was a young man without means; that after the sales Jarrell, with Echols' assistance, moved his personal property to distant places, and sold the same and received the money, and afterwards fled from Georgia to Kansas in company with Echols.

That the money paid to the Sheriff for the "John D. Snelling place" was not Echols', but Jarrell's; that after his flight Jarrell returned to Stewart county, but kept secreted there; that in October, 1868, Echols

also visited the county and offered to sell the "John D. Snelling" and "William S. Perry" places for low prices, but could not get an offer for them, because the frauds practised by himself and Jarrell in the matter were so notorious; that while so offering to sell he admitted that his titles were not good; that subsequently he conveyed said places to defendant, Harrell, for the pretended consideration of four thousand dollars, though the two were worth fifteen thousand dollars; that Harrell did not pay said consideration for the lands, but took the conveyance as legal adviser and agent of Jarrell and for Jarrell's benefit; that Harrell, when he took the conveyance, knew all the frauds charged; that he was one of Jarrell's attorneys in the preparation of his petition and schedule in bankruptcy.

That Jarrell, in 1868, rented to one Tompkins another plantation known as the "Bill Snelling place," and took his obligation for rent, and afterwards, to defraud creditors, transferred to Harrell, without consideration, said obligation and the rent obligations of Grimes, Bramlett and Davis.

The bill interrogates defendants and prays that the sales and deeds of the Sheriff to Echols of the John D. Snelling place, of Jarrell to Echols of the William S. Perry place, of Echols to Harrell of both places, and the transfers to Harrell of said rent obligations may be declared void, and that all of said property may vest in complainant as assignee of Jarrell and for general relief.

The answer of Harrell admits, from information, that Jarrell had been declared a bankrupt, and that the levy and sale of the John D. Snelling place were made at the time stated in the bill; but states his information that the levy and sale were caused by the attorney for the plaintiff in execution; that the sale was duly advertised by the Sheriff, and sold to Echols, the highest bidder, for the sum stated in the bill; that he

knows nothing of the deceptions alleged to have been practised on Rawson by Jarrell; that being present at the sale, he heard Rawson announce that the sale was under the incumbrance of a lien in his favor, but attached little importance to the announcement, as Rawson was a bidder; that the land brought as much as lands generally did then, it being a time of scarcity of money and general depression and public apprehension; he knew of no lands then bringing a larger sum at Sheriff's sale about that time.

He knows nothing of the alleged practices of Jarrell to make the land sell low, or of the settlement after the sale; does not know that Jarrell remained in possession of the land as his own after the sale; has been informed by Grimes, and believes that Jarrell rented the land to Grimes and Bramlett as agent of Echols; admits that Jarrell, on the 7th of October, 1867, sold and conveyed to Echols the "William S. Perry place," but knows nothing of the consideration, except from the deed and the statements of Echols. Defendant bought the rent obligations of Davis, Tompkins, Grimes and Bramlett from Echols before they were due and for valuable consideration; had but little acquaintance with Echols, and did not know his pecuniary standing; knows of Jarrell's bankruptcy only from rumor; asserts that he paid an adequate price to Echols for the land, the same being out of repair, with fences decayed; denies emphatically that he took the conveyance as agent or legal adviser of Jarrell, or with notice of any facts going to impugn the title, or with notice that Echols was not the true owner; asserts that he bought in good faith and for his own use.

The answer very explicitly and particularly denies all the statements in the bill tending to show notice of the alleged frauds of Jarrell and Echols.

Defendant Grimes answered the bill, denying all knowledge of the alleged frauds of Jarrell and Echols, and affirming that when he rented the land from Jarrell, the latter held himself out as acting for Echols.

A replication was filed, and testimony was taken.

ABSTRACT OF PROOFS FOR COMPLAINANT.

Feagin, the Sheriff, testified that he made the levy and sale by direction of Gillis, the attorney for plaintiff in execution. Jarrell wanted the sale made in Rawson's absence, saying that his object was to defeat Rawson; asked witness to knock off the John D. Snelling place quick, adding that Echols would be there to bid for it. One person besides Echols bid. Echols was the highest bidder, and paid in accordance with his bid. Witness did nothing to aid Jarrell in defrauding creditors, but made the sale in the usual manner. Echols was clerk for Jarrell before the sale, and had no visible means known to witness, but witness did not know about his pecuniary condition. Jarrell staid on the place till January after the sale, and seemed to control the place. Gillis, as attorney, conducted the settlement. The Snelling place was first paid for, and the same money paid for both places. The surplus, after satisfying the execution, was paid to Jarrell. Echols, the two Jarrells and Gillis, were present. Echols had the money. Echols had been living with Jarrell from the beginning of the year. When Grimes and Bramlett rented the land Jarrell stated that he was acting for Echols. All lands at Sheriff's sales that year brought very much less than their value. Witness is now working the Snelling place, under Beall, the complainant, with no agreed price as to rent, and defendant Grimes attends to the business there.

R. J. Grimes, one of defendants, testified that he is in possession of the Snelling place. Held in 1868 under a negotiation with Jarrell, who took the note payable to Echols. Did not hear of Echols in the transaction until the note was drawn, when Jarrell said that he was acting for Echols. In 1869 witness held under Harrell, in 1870 under Feagin. Jarrell's

Echols' services were worth $500 a year. Don't think that he had much property. The year 1867 was disastrous to farmers. Cotton was low, about eight or ten cents, in December, 1867. In January, 1867, it was very high, and contracts for labor were made on the basis of a high price for cotton. The land was worth five dollars an acre.

Daniel McKinion testified that he was a creditor of Jarrell, and related conversations with Jarrell after the Sheriff's sale, tending to show that Jarrell had procured the Snelling place to be sold to get rid of Rawson's mortgage, and had given Echols the money to buy it, and that he had furnished money for his father to buy the Richland place. Never told this conversation to Harrell. The land was worth five dollars an acre in 1867.

J. T. Hopkins testified that he heard Echols say in 1867 that he was getting $600 a year from Jarrell.

Henry G. Feagin, re-introduced, testified to statements of Jarrell and Echols that they had moved the stock on the plantations to Alabama, and disposed of it there.

James M. Clark testified that in December, 1867, Harrell appeared as counsel for Jarrell in an equity cause between witness and Jarrell, not relating to the lands now in controversy. At that time witness told Harrell that Jarrell was broken. After the Sheriff's sale, witness had a conversation with Jarrell, in which Jarrell said that the title had passed out of him by the sale, so that Rawson would never get his money. He was at the Snelling place, but called his father's his home. Witness once after the sale heard Echols say that a portion of the Snelling place belonged to Jarrell.

Malcolm Gillis testified that he was attorney for Fitzgerald, the owner of the fi. fa. under which the Snelling and Richland places were sold. Fitzgerald directed that the money should be made, but did not point out any particular property.

James M. Wimberly testified that he was at Lumpkin at the Sheriff's sale. Jarrell owed witness and told him that if the land sold low he would furnish money to buy them, and thus would be able to pay witness, and asked witness to state to the bidders that there was a fi. fa. against a former owner which was a lien on the land, which witness did. Saw Rawson come running to the place of sale and make some announcement.

William A. Rawson was present at the sale; had a mortgage on the Snelling place for over $11,300, which is unpaid. After seeing the land advertised, I saw Jarrell, who told me that he would not let the land sell, as he was going to pay the fi. fa. At a second interview he told me the same thing. I supposed my mortgage was older than the fi. fa., as he had told me there were no judgments against him. On the morning of the sale, he told me that he was going to pay the fi. fa., and stop the sale. About an hour after I heard the Sheriff open the sale. I went up and asked Jarrell why the land was being sold. He made an evasive answer, which I did not understand, and I announced my mortgage. There were two bids after this. I made one of them. Think, but could not say, that he suggested to me to make the announcement. The land was then worth five or six dollars an acre. The two places that Jarrell returned in bankruptcy would average as much per acre as the Snelling and Richland places. I bought these places at assignee's sale; nine hundred acres, for between $1,300 and $1,400. Executions against Holloman, a former owner, are still pressing the land. Do not remember to have seen Judge Harrell at the sale. He then lived in Webster county.

FOR DEFENDANT.

Andrew J. Smith testified that he bought part of the Richland place in December, 1868, for one dollar

an acre; knew nothing wrong in the sale, and believed that he got a good title. Afterwards, in 1869, sold it, and then learned that there would be a lawsuit about it.

Jeptha Wharton testified that Willis Jarrell (father of Wm. L.) told witness that he paid for the Richland place with money got for his place in Randolph County. Lands at Sheriff's sale in 1867 did not bring anything like their value. A place of five or six hundred acres in Webster county brought about one dollar an acre. A lot in Preston worth $1,000 sold for $50.

Thomas W. Clements testified that he bought part of the Richland place in January, 1867, for $1,500, which was about six dollars an acre, half on a year's credit; this part has a house on it, costing about $1,000. When witness bought, he knew nothing wrong in the Sheriff's title. First he knew that there was anything wrong was when after he bought the land he went to Lumpkin and was there told by Wimberly that there would probably be a lawsuit about it. Echols lived on the Snelling place after he bought it at Sheriff's sale and before. Was in the office of Hawkins & Burke, at Americus, part of the time, when Grimes' answer was made out. When witness lay down at night he left Grimes up reading a paper, which witness understood was Grimes' answer.

Evan J. Prather testified that after the middle of February, 1869, he bought an interest in the Richland place, without knowing of any fraud in the Sheriff's sale. In 1867 lands would not have brought their value in Stewart county. There were rumors that old man Jarrell could not make a good title, but not much talk in the neighborhood about fraud in the sale.

David E. Ponder testified that he was present when Echols made the deed to Harrell, and witnessed the deed. It was at the house of Josiah Harrell. Harrell paid Echols in money, to the best of recollection about $4,000.

Malcolm Gillis testified that at the sale of the Snelling place he made two bids before Rawson's announcement. Rawson made one bid after his announcement. Echols and witness bid against each other. The land was cried long enough after Echols' bid for any one to bid. When the Richland place was put up, witness ran it up to enough (with what the Snelling place had brought) to pay the fi. fa., and then announced that he was done bidding. Then Rawson bid, and raised it $300 or $400 more.

David B. Harrell, the defendant, testified that he was counsel for Jarrell in a motion to attach him for contempt for violating an injunction in Clark's case. The matter did not concern any of the lands involved in this litigation. I bought these lands from Echols, Oct. 27th, 1868, and paid him in money $3,460. I had bought of him a day or two before, the three rent notes, for which I paid him $750. At the time I bought the lands I had no notice or intimation that there was fraud in the Sheriff's sale, and did not know that there was any contest in relation to the title. I thought I was getting a good title, or would not have bought. Josiah Harrell told me that Echols was trying to sell the land, and he could buy the Perry place for $1,000, and wanted to borrow the money of me. I told him that if I could make a good trade with Echols I would buy both places, as I had the money, and told him to go to the Clerk's office and examine the titles. He reported that they were good. In 1867 and 1868 I bought several places, and lands were remarkably low. At forced sales they brought hardly anything. Eight hundred acres, about five miles from the Snelling and Perry places, brought at a sale under a tax fi. fa., $200, in the summer of 1867. The same year I bought at Sheriff's sale a lot near the Richland place for $100 (the lots are two hundred and fifty acres). At Marshal's sale in 1867 or 1868 I bought one half lot for $55 and another for $150. At private

sale for cash, early in 1868, I bought seven hundred and fifty acres, seven miles from the Richland place, and better land, for $1,125. At the time I bought, I had no information or belief that Jarrell had any interest in the land, and knew nothing of him in connection with it, except that the titles came through him. When Grimes' answer was drawn, Mr. Burke read the bill to him by sections, and took down his answers. After the answer was finished, Grimes took it and kept it until he got to Macon, where he swore to it. It was mentioned that each man should take his answer, read it over, and correct any mistakes. Clark's bill charged insolvency, and Jarrell's answer denied it. My fee in that case was $500. In February or March, 1868, I had this in hand, having borrowed the amount from him. Afterwards he told me that he wanted some money, and I let him have $250, under his promise to repay it; he has never paid me. That is the only case in which I have represented him since the war. About 1st November, 1867, I went to collect a lumber account of Jarrell—$500 or $600—which he paid. He and Echols were both on the place. They told me of the Sheriff's sale, that Echols had bought the property, but was allowing Jarrell to remain there till he gathered the crop.

Frank E. Burke testified that he drew Grimes' answer, precisely according to Grimes' statement of the facts, then gave it to him to look over and make corrections before swearing to it.

Upon these pleadings and evidence, the Court decreed the sales of the Snelling place and the Perry place, and the transfers of the rent notes to Harrell, to be void, that Harrell deliver to complainant the unpaid rent notes and pay him the rents received with interest, and that the land vest in complainant as assignee.

ASSIGNMENT OF ERRORS.

The error which appellant assigns is in this decree, he contending that it is not authorized by the evidence, either as to the Snelling place, the Perry place, or the rents. To arrive at its conclusion the Circuit Court must have decided: First. That complainant had a right to the lands and rents as against Echols. Second. That the frauds which invalidated Echols' title tainted any title derived from him, even in a bona fide purchaser without notice; or, Third. That Harrell is not a bona fide purchaser without notice.

Appellant maintains that each of these propositions is erroneous.

ARGUMENT.

First. Admitting the great strength of the case which the proof makes at first glance as against Echols, the appellant suggests that it is weakened by the following considerations:

He was not served as a party, and was not heard in the case, though he was in the neighborhood, acting publicly in relation to the land in October, 1868, [testimony of Josiah Harrell, printed page 44, and of Grimes, 42,] six months after complainant was appointed assignee, and complainant must have then known the material facts, being himself a witness, [42.]

Much of the testimony against him is given by persons adversely interested, such as Feagin, who is now holding the land under complainant, [38,] Grimes, who holds under Feagin, [40,] Williford, a creditor of Jarrell, [46,] McKinion, a creditor of Jarrell, [51,] Hopkins, a hireling of McKinion, [53,] Clark, a creditor of Jarrell, [55,] Wimberly, a creditor of Jarrell, [59,] and Rawson, a creditor of Jarrell, [60.]

Nothing fraudulent is to be inferred from Jarrell's presence at the settlement after the Sheriff's sale, [37,] for the land brought more than enough to satisfy the execution, (see Gillis' testimony, 62,) and the excess was going to Jarrell under the law.

Jarrell's remaining on the land after the sale is accounted for by his having a crop to gather, [40, 66.]

Echols' anxiety to sell is accounted for by his need of money in his business at Omaha, [66.]

None of the testimony directly impeaches Jarrell's sale of the "W. S. Perry place" to Echols. The testimony of that character is confined to the Snelling place and the Richland place. Fraud is not to be imputed by analogy.

Second. The second error in the assignment, stated there as one, through which the conclusion of the Circuit Court might have been reached, may be dismissed with the proposition that there is nothing in the bankrupt law to deprive that favored class—honest purchasers without notice—of the protection which equity had always given them. It is believed that this proposition was admitted in the Circuit Court, and that its decision rested on the first and third propositions assigned as error.

Third. Had Harrell notice of the frauds alleged to affect the title of Echols?

It is plainly shown how he came to purchase. More than a year after the Sheriff's sale, being a man of means (testimony of J. Harrell, 44, and of Wimberly, 57,) and in the habit of investing in land [63], he is applied to by Josiah Harrell for a loan of money to buy some of this land. Not wishing to loan, he tells Josiah to examine the titles, and if they are good he will buy for himself. The titles are examined and reported good, and he buys [44]. It was natural that Echols, who had moved to a distant country, should want to sell the rent notes too, and Harrell buys them, and buys both land and notes at such prices as promise profit.

There is no proof that even the rumor of fraud had reached him. He swears that it had not [65] and there is not a word of proof to the contrary.

His residence was in another county, (testimony of Rawson, 61.)

The transactions at the Sheriff's sale in Lumpkin, where he was casually present, were not likely to attract his notice and remain over a year in his momory. Any impression which Rawson's announcement was calculated to make would be effaced by the bid with which Rawson immediately followed it [60]. A bystander might well suspect a contrivance on Rawson's part to get the land at a low price and see in the act no other significance.

There was nothing in the seemingly low price which the land brought to awaken a suspicion of fraud. Public affairs were unsettled. Congress had just decreed suffrage to the freedmen, and this fact caused great alarm in those parts of Georgia, such as Stewart county, where that population predominated. There was a stay-law on the statute book, which was not declared unconstitutional by the Supreme Court of the State until the following winter, and then by a Court not unanimous, and many, therefore, believed that Sheriff's sales would not stand. 37 Ga. Rep. 124.

The year 1867 was disastrous to farmers. (Williford's testimony, 46.)

The testimony is clear that the prices obtained at public sales were very low, (Feagin's testimony, 37-8, Grimes', 41, Wharton's, 48, and Harrell's, 63,) sometimes lower than what the Snelling place brought.

The Sheriff's sale was all regular. It had been advertised four weeks, [Irwin's Code, §3599,] was at the Court House of the county, on the first Tuesday in the month, the day prescribed for Sheriff's sales, [Code §3598,] and under a valid execution. The law of Georgia favors titles thus acquired. 10 Ga. Rep. 74.

Any inference of notice from Jarrell's alleged possession of the land after the sale is removed by the explanation of that possession as only for gathering his crop, [page 66.]

There is no evidence that Jarrell's negotiation of the renting was ever brought to Harrell's notice before he

bought. The notes were payable to Echols and brought to him by Echols. There was nothing to induce a suspicion that Jarrell had had any connection with them. This remark relates to the rent notes for the lands in controversy. The rent note for the land not now in controversy was indeed payable to Jarrell or bearer, he being the undoubted owner of that land when the note was taken, but being negotiable by delivery and not due when Harrell received it, came to him free from taint.

Harrell's few business transactions with Jarrell had no tendency to inform him as to the matter in controversy. An appearance as counsel on a single occasion, not connected with these lands, a small loan connected with the fee in that case, and a sale of some lumber which Jarrell paid for in November, 1867, comprise the whole. Both were men of considerable means and varied business, and these few transactions between men living in different counties would not give either of them much knowledge of the affairs of the other. It may be added that nothing was less likely to suggest insolvency or fraud than the payment of the debt for lumber.

Though Jarrell went into bankruptcy in February, 1868, and Beall was appointed assignee in April, 1868, there is no evidence that the assignee took steps to get possession of this land, or to give the public a notice of his claim to it prior to Harrell's purchase in October, 1868, or that Rawson, the largest creditor, and the one most cognizant of the alleged fraudulent practices, made any effort to put purchasers on guard.

That the neighbors were not generally apprised of wrong in the title is evident from the fact that parts of the Richland place, the title to which was liable to the same objections, were bought in good faith after Harrell bought from Echols, by persons living near. Smith [47], Clements [49], and Prather [55].

The direct evidence of fraud (such as it is,) does not

at all touch the "W. S. Perry place." Yet this place is included in the decree. Fraud must be proved, not merely conjectured.

Remembering that Harrell positively denies notice, and that this denial is not disproved; that no facts to put him on inquiry are shown to have been known to him; that the nearest approach to such a fact—Rawson's conduct at the sale—was neutralized by Rawson's bid; that Harrell paid his money in good faith, and must lose it if the decree stands, we may confidently ask the Court to save him from such a hardship.

The legal principles on the subjects of notice and the protection extended to innocent purchasers for value are so familiar that it is unnecessary to cite authorities.

A. T. AKERMAN,
Of Counsel for Appellant.

SUPREME COURT OF THE UNITED STATES.

NO. 257.

ANALYSIS OF TESTIMONY AND ARGUMENT

FOR APPELLANT IN CASE OF

DAVID B. HARRELL, APPELLANT.

vs.

ELISHA H. BEALL, ASSIGNEE OF WILLIAM L. JARRELL, BANKRUPT, APPELLEE.

Appeal from the Circuit Court of the United States from the Southern District of Georgia.

Supreme Court of the United States.

DAVID B. HARRELL, *Appellant*,

vs.

ELISHA H. BEALL, *Assignee of* WILLIAM L. JARRELL, *Bankrupt, Appellee.*

Appeal from the Circuit Court of the United States from the Southern District of Georgia.

STATEMENT OF FACTS

At the Octo er Term, 1860, of the Superior Court, of Stewart County, Georgia, a judgement was obtained in favor of Jeremiah Culpepper, vs. Jubilee Smith, and Wm L. Jarrell, for eight hundred and thirty-two dollars and sixty four cents with interest and costs. An execution duly issued therefrom, which was afterwards transferred by Culpepper to Jas. A. Fort, and by Fort to W. W. Fitzgerald.

On the 27th day of August, 1867, the Sheriff of said county levied this execution upon 1650 acres of land belonging to Wm. L Jarrell, one of the Defendants, known as the "John D. Snelling place," and upon another plantation known as the "Richland place."

On the 1st day of O tober, 1867, at his regular sale, both of said places were sold to the highest bidder. A. H. Echols purchased the "John D. Snelling place" for $725,00. Willis S. Jarrell, the Father of Defendant, purchased the other for $900,00, or $1000,00, and the Sheriff executed conveyances in pursuance to said sale.

Echols, the purchaser of the "John D. Snelling place,' allowed Wm. L. Jarrell, the Defendant, to remain on the place the balance of the year for the purpose of gathering his matured crops; and on the 29th day of December, 1867, through said Jarrell, as his agent, rented the land to Grimes & Bramlett, taking their promissory note, payable to A. H. Echols, or bearer, for twenty-five dollars, and eight bales of cotton, to weigh five hundred pounds each, and due Nov. 15th, 1868

A few days previous to the 27th day of October, 1868, Echols traded this note to D. B. Harrell, and on that day sold to said Harrell the John D. Snelling place, and executed a conveyance to him. Harrell went into possession and rented to Grimes the place for the year 1869.

On the 7th day of October, 1867, Wm. L. Jarrell executed a conveyance to A. H. Echols, of another plantation in said county, containing 680 acres, known as the "W. S. Perry place." Echols rented this place to J. K. Davis for the year 1868, taking his note, dated January 4, and due 15th November, 1868, for seven bales of cotton weighing five hundred pounds.

This note Echols traded to D. B. Harrell at the same time he traded the Grimes & Bramlett note, and on the 27th of October, 1868, sold and conveyed to said Harrell the "W. S. Perry place" also. At the time that Echols transferred the two notes above described to Harrell, he also transferred a note on W. J. Tompkins, dated February 4, and due November 15, 1868, for five bales of cotton. This note was made payable to W. L. Jarrell, or

bearer, and purported to be for the rent of the "Bill Snelling place," a plantation owned by said Jarrell, and which is not involved in this litigation.

On the 27th day of February, 1868, W. L. Jarrell, upon his own petition, was adjudged a Bankrupt, and in April, E. H. Beall was appointed his Assignee.

THE BILL.

In September, 1869, said Beall, as Assignee, filed a Bill in the 5th Circuit Court, U. S., for the Southern District of Georgia, returnable to November Rules against D. B. Harrell, Grimes & Bramlett, J. K. Davis, and A. H. Echols. Bramlett & Echols were not served. The Bill was dismissed as to Davis

The Bill alleges that the levy, (27th August, 1867,) and sale, (1st October, 1867,) of the "John D. Snelling place," was procured by Wm. L. Jarrell, Defendant, for the purpose of hindering, delaying, and defrauding, creditors. That Echols, the purchaser, knew this, and was the instrument of Jarrell in carrying out the frauds connected with said sale. That he paid nothing for said land, or, if he did, he paid the money of Jarrell under an understanding between them to cover up the title from the creditors, and consequently no title passed by said sale to Echols. That D B Harrell, the purchaser from A. H Echols, (27th October, 1868,) was cogniz nt of the frauds etween Jarrell and Echols in said pretended sale, and of their general fraudulent acts looking to the same end—defeating creditors—and was their attorney and legal advisor, and took the conveyance from Echols in order to carry out the fraudulent intent charged upon Jarrell and Echols, and, therefore, no title passed to him.

The Bill also alleges that the conveyance made by Jarrell to Echols, of the "W. S. Perry place," (7th October, 1867,) was executed for the same purpose—defrauding creditors—and charges D. B. Harrell with notice thereof, and with the same intent in taking the conveyance from Echols, (October 27th, 1868.)

It alleges further that the note on Grimes & Bramlett, above described, was never the property of said Echols—that the land was rented by Jarrell and the note taken in Echols' name to defraud creditors. It makes the same allegation as to the note given by Davis to Echols for the rent of the "W. S. Perry place" Also, that the note on W. J Tompkins, payable to Jarrell, or bearer, for the rent of the "Bill Snelling place," was never the property of Echols, but was placed in his hands for the same purpose as is alleged as to the others—defrauding Jarrell's creditors—and that D. B. Harrell took these notes with notice t ereof, and was not a *bona fide* holder.

In view of these alledged facts, the Bill prays for a decree setting aside the Sheriff's deed to Echols, (1st October, 1867,) and Echols' deed to D. B Harrell, (27th October, 1868,) of the "John D Snelling place." Also the deed of Jarrell to Echols, (7th October, 1867,) and Echols' deed to D. B. Harrell, (27th October, 1868) of the W. S. Perry place. Also the transfer of the three described notes from Echols to D. B. Harrell, and that all of said property be declared assets in the hands of the Assignee for the payment of Jarrell s debts.

The answer of D. B. Harrell denies all knowledge of any frauds, (if there were such,) between Jarrell and Echols Denies any fraud on his part, or in his knowledge connected with the Sheriff's sale of the "John D. Snelling place" to Echols, or the conveyance of the "W. S. Perry place" by Jarrell to Echols, or with either of the three notes, and sets up that he was a *bona fide* purchaser for a valuable consideration, and without notice of anything

affecting the titles of either of said places. Also, that he, in due course of trade, and for valuable consideration, purchased of Echols the three notes described before they became due, without notice of any fraud or defect of title in Echols.

Grimes answered, also denying any knowledge of alleged frauds between Jarrell and Echols. That he rented the John D. Snelling place, for 1868, from Jarrell, as the agent of Echols, and afterwards rented from D. B. Harrell.

Davis filed no answer, and the Bill was dismissed as to him.

ARGUMENT.

The answer of D. B. Harrell distinctly and positively denying all of the allegations of the Bill, the evidence must be examined to see whether it makes such a case as entitles the Assignee to the decree prayed for.

There is involved,

1st. The titles to the "John D. Snelling place," purchased by Echols at the Sheriff's sale, and sold by him to D B Harrell

2d. The titles to the "W. S Perry place," purchased by Echols from Jarrell and sold by him to D. B Harrell.

3rd. The titles of the three promissory notes—one given by Grimes & Bramlett, payable to Echols, or bearer, for the rent of the "John D. Snelling place"—the negotiations for the rent having been made by Jarrell as the agent of Echols Another, given by Davis to Echols, or bearer, for the rent of the "W. S. Perry place" And the third one, given by Tompkins to Jarrell, or bearer, for the rent of a place not involved in this litigation, known as the "Bill Snelling place."

Each of these items of property had come into the ownership, or the possession, of Echols by different channels, for distinct considerations, and at different times, and were, by him, sold to D. B. Harrell, for separate and distinct considerations. Therefore, to arrive at a proper conclusion as to either it is necessary to examine the evidence relating directly to that one.

1st. Let us examine the evidence as to the notes:

Feagin says, p. 38:

"That he was there when the John D. Snelling place was rented to Grimes & Bramlett. Jarrell was present. Jarrell stated that he was acting as agent for A. H Echols, and note was made payable to Echols. Mr. Jarrell told Grimes that he would have to take the note that way—then turned to me and said—"You understand it all.' Echols was not present."

Grimes says, p. 39:

"That he rented the plantation for the year 1868, in partnership with Bramlett. He negotiated the terms of rent with Wm. L. Jarrell. The negotiation was had in December, 1867, between 25th and January 1st. During the negotiation he did not speak of being the agent of any person. When he reduced the terms to writing, to-wit: a note or myself and Bramlett to sign, he said he was acting as the agent of Mr. Echols, and that we were to make a note payable to Mr. Echols. I told him that it did not make any difference to me to whom the rent went or to whom the note was made payable. Before the making of the note I never heard of Mr. Echols in the transaction. When I made the note I observed to Mr. Jarrell that the note was made payable to Mr. Echols; and he then stated that he was acting as the agent of Echols. Harrell demanded rent of me for that place by notifying me that I must pay him the rent, in Cuthbert, about 16th November, 1868. The next time I saw the notes they were cop-

ied in the Bill filed by Judge Harrell against me. Echols had them after Jarrell demanded payment, when he tried to sell me the land. Judge Harrell told me, I think, that he owned the notes before they were due. Jarrell told me before the notes were delivered that he was agent for Echols."

This is the whole of the testimony adduced by the complainant in reference to the note of Grimes & Bramlett

D. B Harrell, in his answer, p 20, and in his evidence, p. 63, states that the note, by due course of trade, before it became due, and for a valuable consideration, came into his hands.

Is the evidence sufficient to overturn his title thus obtained?

But, says complainant, Harrell knew that Jarrell negotiated the rent with Grimes & Bramlett and took the note from them. Harrell, in his answer, p. 22, states that he did not know that fact until he was so informed by Grimes *long after* h had purchased the note If confirmation were needed, the very fact that Harrell could have had no interest in conferring with Grimes about the note until after he became the owner would be sufficient; but confirmation is not needed, for there is no evidence whatever that he knew it before Grimes informed him after his purchase.

Next, as to the note of J. K. Davis for the rent of the W S. Perry place:

The only mention of this note is to be found in the answer of D. B. Harrell, p. 25, and his evidence, p.63. That is: "That he bought it from Echols, before it was due, for a valuable consideration, and with no notice or intimation of anything that would affect the title of Echols There is no evidence that Jarrell had any connection with, or even ever saw this note

Next, as to the Tompkins note:

The only evidence as to this note is found in D B. Harrell's answer, p 23, and his evidence, p. 63. "That he purchased it before due, for a valuable consideration, and without notice of any defect of title in Echols, or fraud.

So, as far as the testimony in *direct* reference to these notes is concerned, there is nothing to invalidate the title of Echols, much less of Harrell.

2nd. Let us look to the evidence in direct reference to the W. S. Perry place:

Feagin says, p. 38:

That the Snelling place is worth twice as much as the W. S. Perry place, and was in 1867.

Josiah Harrell, p. 44, says:

"I once thought I was interested in the purchase of the land from Echols, but don't know whether I am or not." [The evidence of D. B Harrell explains this. See p. 63, where he says: "He told J. Harrell that if he bought both places he, J. Harrell, could have the Perry place at what he gave for it" J. Harrell having never paid, and his interest being contingent on that, *was* and *is* not interested.]" "After Echols went off he wrote to me to sell the land for him. I could not sell it for what I thought it was worth, and I wrote to him to send me a power of Attorney, and I thought he could do better; and he wrote me word that he would be here on a certain day, and the land could not be sold for what it was worth, because there was a good deal of talk about him—(about the land and Echols.) We finally sold a portion of it, known as the "W. S. Perry place." When I say we, I mean Echols and I. We sold to a man by the name of Blackburn, for some town property. We got either one lot and two houses, or two houses and lots in Cuthbert. Blackburn valued the property at Two Thousand Dollars, but we did not value it at so much. A few days after that I saw Mr. Echols He said that Blackburn had been to

see him and told him that he had been to Lumpkin and seen Beall and Wimberly, and Feagin, and Grimes, and others, and they told him that he had lost his town property, and he got no title to the W. S. Perry place. Mr. Echols came to see me and wanted to know what to do about it. I told him to let him have his houses back. Echols and I went down to see Blackburn and the trade was cancelled. I then proposed to buy the land myself Don't remember the price. It was some low figure. Did not have the money, and went to Judge Harrell to borrow it. The Judge told me that he had no money to spare, but told me to go and examine the titles, and that if the titles were good he would buy it and let me into it. [See note above D. B. Harrell's testimony, p. 63, for explanation of this.] I went and examined the titles and told Judge Harrell that I thought the titles were good, and that he could sold the land if he bought it. * * * A few days after that Echols came to my house and told me that he had sold the land to Judge Harrell, and brought me some word about raising some money for the Judge, but I don't remember what. * * *

The next thing I heard from it Judge Harrell notified me that he and Echols were to meet at my house on a certain morning and draw writings for the land. At the time the writings were drawn some three or four thousand dollars were paid to Mr. Echols. I think Mr Echols, Judge Harrell, Mr. Ponder and myself were present. The amount paid was, I am pretty certain, Thirty one Hundred Dollars. The reason I could not sell the land was because there were rumors in the country about the titles to the land. I don't know that I ever talked with Judge Harrell about these rumors. The rumors were rife throughout the country. After the papers were signed we left for Cuthbert Court and Judge Harrell told me that I could have the Perry place for doing certain services, [see explanation above quoted.] Don't know how the Snelling and Perry places were valued at the time of the sale by Echols to Judge Harrell The rumor was that Jarrell had acted the rascal throughout, and that the titles to the property was bad. Jarrell and Echols both recognized my right to sell after I was appointed agent by Echols. The whole consideration for the land and notes was paid in cash the day the deeds and papers were drawn. I seen Echols put the money in his pocket and carry it off.

I don't know that Judge Harrell had ever heard of the rumors in regard to this land. At Judge Harrell's suggestion I examined into the titles, and advised him that he would get good titles When I said that the rumors were rife throughout the country, I meant that they were so about Lumpkin, and where Jarrell lived, and throughout the Eastern part of Stewart county. I don't know that I ever heard of the rumors outside of Stewart county before lately."

John B Williford's evidence, p. 45.

"He (Jarrell) owned the W. S. Perry place."

Ponder's evidence, p. 56.

Who testifies only to the witnessing of the deed from Echols to D. B. Harrell, and the payment, in money, by Harrell, of about Four Thousand Dollars.

W. A. Rawson's evidence, page 61.

"I am under the impression that Jarrell had the W S. Perry place, the two places he returned in bankruptcy, and the two places advertised, the Snelling place, and the Richland place. I think the places would average as much as the Snelling place. They were smaller."

This is the whole of the testimony brought forward by the complainant in direct reference to the W. S. Perry place; and there is nothing in it to im-

pu-n the validity or affect the *bona fides* of the sale by Jarrell to Echols, or o! Echols to D. B. Harrell, and considering the evidence of Harrell in connection with it, there can be no question as to him.

He says, p. 62

He bought the lands known in this litigation as the * * * * W S. Perry place of A. H. Echols, about 26th or 27th of October, 1868, for which I paid him. We rated the W. S. Perry place at One Thousand Dollars * * * * *

The trade w s a fair, open, honest transaction, and I thought I was getting a good title to the land, or I would not have bought it.

Josi h Harrell came to me about that time and told me that Echols was trying to sell the "John D. Snelling place," and the "W. S. Perry place," and that he, Josiah Harrell, could buy the W. S Perry place for One Thousand Dollars and wanted to orrow of me the money to buy it with. I told Harrell that if Echols wished to sell both places, and if I could make a good trade with him, I would buy both places, as I had the money to operate with, and told Harrell to go to the Clerk's office and examine the titles and see if they were good. I told Harrell that if I bought both places he could have the W S. Perry place at what I gave for it. Harrell reported to me that the titles were good. * * * * * *

At the time I traded for the lands I ha! no deed before me; but when I paid for the lands and notes I had before me the Sheriff's deed to Echols to the Snelling place, and Jarrel.'s deed to Echols to the Perry place."

But the complainant, admitt ng that there is no *direct* proof, insists that there are circumstances that establish fraud and notice to D. B. Harrell.

And these are—

1st. Echol ' anxiety to sell.

2d. His sale to Blackburn and cancellation thereof.

3rd. The rumors about Echols and the land; and

4th. Inadequacy of consideration.

As to the 1s.—The anxiety of Echols to sell is explained by the evidence—D. B. Harrell's testimony, p. 66:

"I don't know where Jarrell went, or Echols, except that Echols told ! e when he came back that he had settled in Omaha in business, and *wanted money badly*, and wanted to sell the land and notes."

Is it not a more reasonable presumption that a man who had removed to a distant ! oint—made his business arrangements, and by his own statements—"needed money badly,' would be anxious to sell property upon which he could realize and save his credit in a new home, than that he desired to sacrifice it because of fraud in its acquisition?

As to 2d: This, instead of a circumstance showing fraud, is a proof, strong and decided, of the good faith of Echols. The sale to Black urn had been consummated. He had received the price of his lands. It was in his own hands. If he had been the perpetrator of the frauds alleged in Complainant's Bill, and knew that his title to the lands was worthless, why give up the booty already received from Blackburn, and risk selling again? This was the act of a man conscious of rights, rather than a tacit acknowledgement of guilt.

3rd The rumors concerning the lands can not be held as proof of fraud between Jarrell and Echols. If so, the rights and property of any person could be frittered away by detraction and slander. The only force that is sought to be attached to them is—"That they were sufficient to put D. B. Harrell upon notice and inquiry." Are they sufficient for this purpose?

Josiah Harrell's testimony gives to them the most strength and importance. He says, p. 45: "That they were rife throughout the country, (me in-

ing about Lumpkin, and where Jarrell lived, and through the Eastern part of Stewart county.) And the rumor was that Jarrel had acted the rascal all through, and the titles to the property was bad"

There is no testimony that the rumors ever came to the ears of D. B. Harrell. On the contrary the proof, both positive and by circumstances, is conclusive against it. Josiah Harrell, the only witness who gives them any force whatever—"a local habitation and a name"—says, p. 44: "That he never talked with Judge Harrell about these rumors. He don't know that Judge Harrell ever heard of the rumors in regard to this land." P.45.

D. B. Harrell, both in his answer, p 22, and in his testimony, p. 63, denies that they ever came to him

In addition to this, the circumstances strongly negative the idea that he ever heard them. Like all slanders of private individuals, they were local—confined to the neighborhood of Jarrell, in Stewart county. D. B. Harrell was a resident of another county, 16 or 18 miles distant from the location of these rumors. Answer, p. 25, and Rawson's testimony, page 61 Had no interest in Jarrell, Echols, or the lands, until approached by Josiah Harrell, (who was, and had been all along, acting as the agent of Echols, and assisting him to sell the lands.) It is not probable that he would have informed D. B Harrell of a fact that would have defeated the trade. On the contrary he "did not mention the rumors,' but informed him "that the titles were good."

It is equally improbable to suppose that Echols himself would have communicated to him *any* circumstance of suspicion to place him upon inquiry.

These remarks are equally applicable to the 1st and 2nd assumptions of complainant; for, conceding the anxiety of Echols to sell, and his sale to Blackburn, and cancellation, to be badges of fraud between Jarrell and Echols, there is nothing in the evidence to charge D. B. Harrell with notice. For his anxiety to sell he give to Harrell a reasonabl explanation—page 66: "That he had made business engagements in Omaha and needed money badly."

And in reference to the trade and cancellation, the testimony of Josiah Harrell, the agent of Echols, negatives the idea that he communicated that transaction to D. B Harrell, and it would have been unreasonable to presume that Echols would have done so.

The 4th ground—"Inadequacy of consideration," will be passed until a point in the argument is reached where it is applicable to the two other items of property.

3rd. Let us examine the evidence in regard to the "John D. Snelling place:"

The complainant insists that the Sheriff's sale of this place, and purchase by Echols, was fraudulent and void.

1st Because Jarrell procured the land to be levied on and sold. The proof fails to establish this allegation. On the contrary, Feagin, the Sheriff, who made the levy says, p. 37:

"Judge Gillis directed me to make the levy and sale Gillis was the Attorney of Plaintiff in Fi Fa."

Gillis, p. 58, says:

"Mr. Fitzgerald did not point out any particular property, but directed generally that the money should be made."

And even if the proof did establish that assumption, there is no evidence whatever that D. B. Harrell knew who procured the levy and sale.

2nd. Because of Jarrell's conversations and declarations of intention to the Sheriff and others.

These conversations were as follows:

Feagin, the Sheriff, p. 35.

"Mr. Jarrell told me before the sale that he wanted the land to be sold on the execution before Wm. A. Rawson, who held a mortgage on the land, returned from the North, and that if I could work it through before Mr. Rawson returned he would sell me off a certain portion for almost any sum. * * * * * This was said, I think, after the levy, and a fews days before the sale. It was after Mr Rawson returned, as I knew nothing of the mortgage. He proposed to sell me what was on the other side of the creek adjoining my place. He said he wanted the sale hurried up before Mr. Rawson got back He may not have used the word "hurried." Mr. Jarrell, at the time he made these propositions to me, was living on that place. * * * * The day before the sale Mr. Jarrell sent Mr. Echols to Macon to get some money, and that he would have a bidder there to buy the land, or a man to buy the land. This may have been more than one day before the sale I can't say that I can recollect the exact words.

This conversation was not more than two or three days before the sale, and my impression is that it was the day before the sale. The impression left upon my mind from the conversations with Jarrell was, that Mr. Echols was to bid off the land, but nothing positive was said. Mr. Jarrell talked with me two or three times before the sale and I cannot recollect all that was said by him He stated to me several times, and always when we talked about it, that his object was to defeat Mr. Rawson. Mr. Jarrell stated to me several times before the sale, that he would sell me the part mentioned before at almost any price; provided I would get the sale through After the sale he proposed to sell it to me at 75 cents per acre, and in the final settlement proposed to give me a fraction of a lot of which I owned a part. This I refused, and told him there would be a lawsuit about it, and I would have nothing to do with it. * * * On the day of the sale Jarrell came to me and asked me to put up the "John D. Snelling place," and wanted me to knock it off as quick as I could—said that Mr. Echols would be there to bid for it I told him that I could not knock it off as long as any body would bid for it, but would knock it off as soon as the bidding ceased. * * *

"I made no agreement with Jarrell to carry out any proposition he made to me, and did not carry out any * * * I think, and am pretty certain, that Echols was present at some times when Jarrell told me about getting some one to bid off the land. He was not present when Jarrell came to me on the day of the sale He was not present when Jarrell told me a day or two before the sale that he would have a man there to bid off the land. D. B. Harrel was not present at any conversation between Jarrell and myself."

This is all of the evidence of conversations and declarations of intention of Jarrell to the Sheriff, and which, it is insisted by Complainant, shows fraud between Jarrell and Echols in connection with the sale.

Does it do it?

In the first place, conversations between Jarrell and Feagin are improper testimony to affect the rights of Echols or of D. B. Harrell, unless they were respectively present. They were objected to before the commissioner on that ground, and ought not to be considered by the Court for that reason. It is true that Feagin says, p. 38—"I think, and am pretty certain, that Echols was present at some time when Jarrell told me about getting some one to bid off the land."

But not a word is said at that time to implicate Echols in any transaction with Jarrell. Not a word about Echols bidding off the land. Not a word about sending him to Macon to get money. Or about selling Feagin a part

of the land at almost any price. Or giving him some of it Nothing about hurrying the sale through before Rawson returned from the North, when he had already returned, as this witness himself shows, page —. None of these indicia of fraud by conversations of Jarrell with Feagin brought to the knowledge of Echols to place him on guard that his rights were to be affected And not the least pretense nor proof that D. B Harrell ever heard of them, or had any reason to suspect that such ever occurred between those parties

Next, Jarrell's conversations with others:

E. H. Beall says, p. 42:

"That morning I was in Mr Wimberly's office, and Mr. Jarrell said that Feagin, the Sheriff, thought that he was going to "cry" his property but that he would not do it In the fall after the sale he was talking to me about going through the Court of Bankruptcy, and said that he had employed D. B Harrell, J. Harrell and W. A. Hawkins as his Attorneys."

Josiah Harrell says, p 44:

"I don't know that Jarrell ever said anything to m about the sale of the "John D. Snelling place" I don't think I talked with Jarrell on the day of the sale, after the sale. From what I heard Jarrell and Echols say, Echols controlled the land after the sale. Jarrell and Echols both recognized my right to sell after I was appointed agent by Echols."

John E. Williford says, p. 46:

"I heard Mr. Jarrell frequently speak of his embarrassments. He told me frequently that if he broke again he did not intend to be left flat again, without money, as he was after the war. * * * * Never heard any conversation between Jarrell and Echols after Echols purchased the land at Sheriff's sale. * * * When Mr. Jarrell told me that if he brok again he would not be left without money as he was after the war, it was in the spring of 1866, when I first went to clerk for him."

Daniel McKinnon says, p. 51:

"Jarrell said about the "John D. Snelling place," That he was involved in an old debt with a Mr Prothro, and that he had mortgaged the Snelling place to Rawson, and that this mortgage prevented this place from becoming subject to his new creditors, and that he had it levied on and gave the money to Echols to purchase the land He said that the reason that he did this was, that he had not paid his old debts, and that he would be damned if he ever did. He told me that I was aware from what he had previously told me, that Echols was not able to buy the land as Echols had been in his employ at six hundred dollars per year, and that he had to buy his clothes when he commenced to clerk for him. He said my debt was a new debt, and that he expected to pay me. That there were three parties he expected to pay— Mrs. Williford, Mr. Smith and myself, as these were new debts. He said that he owed Mrs. Williford two hundred dollars in gold; outside of these, he did not expect to pay anybody. * * * He said in the conversation about the sale that the reason he wanted the Snelling place sold was to get rid of the Rawson mortgage. He said that was an old debt, and there might be considerable usury in it, and that he had the sale made merely to get rid of that. Judge Harrell was not present at the conversation between Jarrell and myself. Never told him about the conversation. * * * He told me that he had roped Mr. Rawson in the sale, and that I had reason to rejoice at it, as I then had a chance to get my money.

The conversation I had with Jarrell was brought about by my trying to get my money, and he promised to pay me my new debt; but would never promise to pay the old one He told me that he had a considerable amount

of cotton on hand at the surrender. He said he had destroyed the lien of Rawson's mortgage by the Sheriff's sale. When I saw Jarrell after the sale he was sick and not able to be out of the house.

Did not see him and Echols together after the sale."

There is certainly nothing in the testimony of Beall, Harrell, or Williford that, by the widest construction, proves fraud on the part of Jarrell, much less connecting Echols with it.

The testimony of McKinnon is the strongest that is brought to the support of this proposition. If it was paper evidence it *might* establish a fraudulent *intent* on the part of Jarrell; but, this whole conversation is improper testimony. It occurred after the sale and cannot affect the title already accrued to Echols. He knew nothing of it. Even if it should be considered, it ought to be with great allowance. McKinnon was a large creditor, holding eight or ten thousand dollars against Jarrell and endeavoring to secure, and as the witness says, *Jarrell was sick, not able to be out of the house.*

The sayings of a sick debtor, confined to his room, to an importunate creditor, to get rid of him, ought, certainly, to have very little weight.

James M. Clark says, p. 54:

"Had a conversation with Jarrell after the sale. Went to his house and staid all night with him. *He owed me quite a large amount, and I went to see him to try to secure it.* He said that the titles to the land sold at Sheriff's sale had passed out of him so effectually by the sale, that Rawson never could get his money. He did not disclose to me his object in having the property sold. He told me of what he did on the day of sale. I can't recollect any particular line of conduct, except that he stated that Rawson had defeated himself by proclaiming that he had a mortgage on the place. When I got there *Jarrell appeared quite sick*, but in talking of the matter he became excited and got up and set by the fire—got almost well. * * * * When I saw Jarrell at his house he did not set up any claim to the land which had been sold at Sheriff's sale, but said that the title was so effectually out of him, that Rawson never would get a dollar."

The evidence of this witness is against the Complainant. He testifies expressly to a disclaimer by Jarrell *after the sale*, of any title to—possession of—or interest in the land sold. But his evidence ought not to be considered in this case. *It was after the sale.* Echols was not present, nor D. B. Harrell, and neither should be prejudiced by his statements thus made. Even if allowed, his evidence should be weighed with that of the preceding one, (McKinnon,) a large creditor who had gone there to try to secure his claim, and a sick debtor, excited by fever and importunity.

James L. Wimberly, another creditor, says, p. 39:

"Jarrell owed me between seven hundred and a thousand dollars. He stated to me that if the "Richland" and "Snelling" places sold on that day for a small sum he would be able to pay me for the same, as he was to furnish the money to pay for them; and in this way would be able to pay me the amount due me, and asked me to assist in getting the lands to sell for a small price."

There is nothing in this testimony. Wimberly did nothing to further Jarrell's wishes as far as the "John D. Snelling place" was concerned. He did announce, as he says, a lien on the "Richland" place, which might, and probably did, affect its sale. But there was nothing improper in that, as the lien actually existed, and Jarrell had a legitimate reason for wishing that place to sell for as small an amount as possible, as we afterwards will see.

But, as with the preceding conversations, no notice of them is brought home to Echols, or to D. B. Harrell.

W. A. Rawson says, p 60:

"I think I had three interviews with Jarrell about the sale before it took place. * * * He told me how he got title, and that there were no executions against it. After seeing it advertised I went to see Mr. Jarrell, and asked him what he was going to do about it; if he was going to let the land sell, and he said: By no means; that he was going to pay the Fi Fa and me too, and that I need have no trouble about it, as I had told him that I did not want it to pass into other hands under the sale, nor that it should be sold subject to the mortgage. I had a second interview with him, and he told me the same thing, in substance, as he did in the first instance.

I confided in those representations and I supposed my mortgage was older than the Fi Fa, as he told me there was no judgment against him.

On the morning of the sale he come past my store, and I asked him if the land was to be sold, and told him that I still saw it advertised. He replied that he was not going to let the land sell—that he was going right then to pay up the Fi Fa and stop the sale. My object in asking him was to be present at the sale if it was to take place; and as he assured me that the sale would not take place, I turned into my store, and about an hour after I heard the Sheriff open the sale, and offer this land for sale. I went up to where the land was being sold and asked Jarrell why the land was being sold. He made some evasive answer, which I did not understand, and I immediately announced my mortgage, and that I should hold it over the purchaser at the sale. I don't think there were but two bids after this, *and I made one of them.* I could not say that Jarrell suggested to me to make the announcement—think he did. * * * There was no agreement between Jarrell and myself that I should aid in making the land bring a small sum I had relied upon what Jarrell told me—that my mortgage was older than the judgement. * * * Judge Harrell was not present at any interview I had with Jarrell."

If the statements of Jarrell are to be considered evidence, they ought certainly to be construed as he made them. To give them this legitimate construction, they prove only this: That Jarrell, to the last moment, hoped that he would be able to make some arrangement to prevent his land from being sold; or, in case he could not, and his property should be sacrificed, (for all forced sales in Georgia, at that time, were sacrifices,) that the "Richland" place should sell cheap, so that his father could buy it. For, bear in mind, that all of the efforts of Jarrell to get liens announced to influence the price of his land were confined to that place. He did nothing, by word or deed—procured no one else to do anything, by announcing liens, or otherwise—to influence the sale of the "John D Snelling" place. Rawson was the only one that announced a lien. He gives the reason why he did it, and of his own volition. p —: "I thought it was necessary for me to give notice of my mortgage to me to hold the lien of my mortgage."

Taking the whole conversations between Jarrell and Rawson, coupled with the facts that Rawson knew that the sale was coming off, for he saw it advertised. That it was a matter entirely with the Sheriff, who had seized it under a valid F Fa. That Jarrell himself could not stop the sale, only by paying of the Fi Fa. That Rawson was present at the sale; that he bid on the land after he announced his mortgage. That Jarrell did not act, by word or deed, then and there, to affect the sale, or to influence bidders. That there were present as many as usually attended Sheriff sales, (Wimberly, p. 59, and Feagin, p. —) That the sale was made in the usual manner, (Feagin, 37.) "That after Echols' last bid the land was "cried" sufficiently long for any one to bid." (Gillis, —). That Rawson himself could

have bid had he desired to (Rawson, 61.) That the reason he did not bid was because he did not want the land, (Rawson, 61,) and not from any act or statement of Jarrell. That Echols was the highest and best bidder, and the money was paid by him in accordance with his bid, (Feagin, 37.) That the money was received by the Sheriff, and placed as a payment on the execution—it may be confidently asked, where is the reason why a judicial sale by an officer, under a process that has not been attacked, should be set aside, and that, too, when it could only inure to the benefit of a person who, if there was any act done that day to prevent a fair sale of the land was the one that did it? For if this sale is set aside, Rawson's mortgage is a lien upon the land in preference to other creditors, and by the testimony of all the witnesses, even Rawson, himself, p. —, the land is not worth near as much as his mortgage debt.

But complainant insists that Jarrell received Rawson as to the priority of the judgement over his mortgage, and this was a fraud.

This position is untenable, for two reasons: First, Jarrell stood in no such confidential relations to Rawson as would charge him with R's. credulity. Secondly. Both the judgement and the mortgage were matters of record in the same office, and, by the law, notice not only to Rawson, but to the world; and he cannot say that he was deceived in regard to that of which the law charged him with notice.

Third ground upon which complainant insists that the sale was fraudulent and void is—

Because Echols, the purchaser, was a poor man, and without means.

The evidence bearing upon that point is, Feagin, p. 36, who states that he "Don t know certainly about Echols' pecuniary means. He had no visible means that I knew of."

Josiah Harrell, p. 45,

"Thinks his services, as Clerk for Jarrell, was worth $1500 00 or $1800. 00 per year.

Williford, p. 46:

"Thinks his services were worth about $500.00 per year, and he had a little money when he came. Not much."

Hopkins heard him say—"that he was getting six hundred dollars per year from Jarrell."

It is an unsound proposition that a man is poor and not able to purchase property because every one does not know all about his finances. Many, worth thousands, have no "visible means" except t their bankers. But, concede that being poor is a ground why one should not purchase property, and that Echols' impecuniosity is material, the evidence shows a sufficient amount to have made this purchase of his own earnings. He had been clerk for Jarrell about two years, at a salary, averaging all of the witnesses, that would have realized near two thousand dollars. He had some money when he came. Had taught school he year before, and it is but a fair presumption that a man of his business habits and sobriety, Feagin, p. —, should have saved money. But, giving to this ground all the force claimed for it as a badge of fraud, D. B. Harrell, in his answer, p. 20, says that he had only a short acquaintance with Echols, and knew nothing of his pecuniary standing, and there is no proof that he did.

4th. The complainant urges that Echols was the Clerk of Jarrell.

The evidence establishes the fact that Echols was the clerk of Jarrell in 1866 and 1867. The only *legal* effect of that confidential relationship is, that their acts together should be more closely scanned than between indifferent parties. Fraud cannot be presumed from that connection. It must spring

from acts.

But complainant insists that there were acts of Echols in connection with Jarrell that establish fraud, and here they are:

1st. He assisted Jarrell to run off his stock and sell them; and Feagin says, p. 53, "I don't know, of my own knowledge what became of the stock on Jarrell's plantations. I heard Jarrell and Echols say that they were carried to Alabama and disposed of. Echols told me that he carried off the stock, and that a brother of mine, acting as Sheriff of Barbour county, arrested him. He told me that he dodged me and saw me in the county, and was under the bed at Mr. Jarrell's in Stewart county, to get out of my way. Said he was acting under an assumed name in Alabama. * * * * He said that he sold the mules in what was then Barbour county. He told me what he got for the stock. It was a small price. The stock was in bad condition. This was in a conversation between Jarrell, Echols and myself. * * * * I had the above conversation with Echols the day after he got back. Don't recollect the time. * * * * Don't know why he dodged me when I was in Alabama. I was not after him, but on private business. Did not hear Jarrell complain that Echols had taken the money and kept it. Don't know why Echols dodged me. Had nothing against him or Jarrell either."

If this conduct of Echols establishes a fraudulent combination between them to defeat creditors, it could only extend to the property upon which the combination acted, or upon property interested in or disposed of jointly by them after such combination. It could not affect property sold by due process of law, before such combination. This removal of stock was after the Sheriff's sale of the land; for Feagin says that at that time he had nothing against Echols or Jarrell either; when, up to the sale, he had the execution against Jarrell upon which the land sold.

But say that it does establish fraud as between Jarrell and Echols. There is no proof that Harrell knew of that transaction—none at all.

D. B Harrell, himself, discloses another instance where Jarrell and Echols appear upon the scene together.

D. B. Harrell's testimony p. 64:

"A man of the name of Clark had sold Jarrell a plantation and stock. Afterwards they rescinded the trade and Jarrell gave up the lands and all of the stock then living, and also gave Clark his note for $1500.00 or $2000.00. This note was given without security of any kind, and Clark filed his Bill against Jarrell to restrain him from removing the crop from the place taken back, or from any other of his places. An Injunction had been granted and the motion for contempt was for removing the cotton contrary to the injunction. The motion was against Jarrell and Echols; but I don't think the Bill was filed against Echols, as he was justified upon the ground that he acted under the orders of Jarrell. There was an investigation before Judge Vason as to whether Jarrell and Echols had been guilty of contempt. Echols was present at the investigation. * * * * Echols was discharged on the motion against him for contempt."

And so was Jarrell and the Bill dismissed, as the Court will readily see by observing that it was an attempt by Clark to enjoin Jarrell from removing his crops, when he (Clark) had no lien, either legal or equitable, upon them. Nothing but a promissory note, without security of any kind.

These are the only *two instances proven* where Jarrell and Echols were acting together in concert, and upon which complainant bases his assumption of a fraudulent combination.

The first instance has already been disposed of. In the last their conduct

was judicially passed upon, and each of them discharged. And it is to be further remarked, that this is the only instance of which D. B Harrell had any notice of their being "charged" together, much less interested and acting in concert.

And this, too, was long after the Sheriff's sale. Clark's testimony, p. 54: "It was during December Term, 1867." The sale was in October, 1867.

5th. But, says complainant, Echols paid not his own, but the money of Jarrell for the land, and brings to the stand

Feagin, p. 36.

"The day before the sale Mr. Jarrell told me that he sent Mr. Echols to Macon to get some money, and that he would have a bidder there to buy the land, or a man there to buy the land. I can't say that I recollect the exact words. * * * * The impression left on my mind from the conversation with Mr. Jarrell was, that Echols was to bid off the land, but nothing positive was said by Mr. Jarrell, as I can recollect."

This testimony is all that complainant relies on to establish this ground, and it utterly fails to do so. And it is unreasonable to ask a Court to set aside a judicial sale, made in market, overt, upon such loose, uncertain, and flimsy testimony as this witness, Feagin, brings to the case by his "impressions" —"though nothing positive was said"—"I cannot recollect all that was said," and the following model of clearness upon the same point: "I think the John D Snelling place was first paid for, and then the same money was used to pay for the other place. * * * * I don't know why, (misprint for how?) the same money paid for both. "Don't think" the old man Willis had any money."

The same witness, further on, completely refutes this ground—p. 38:

"The two plantations brought more money than enough to pay the execution, and the surplus was paid to Jarrell. I think he gave me a receipt. * * * * Judge Gillis and Echols handled the money for the amount of the sales. When the money was paid Judge Gillis told me that there was money enough to pay the execution and some was paid back to Jarrell. * * * * I think Echols had the money."

The same money could not have paid for both places when there was enough, not only to pay for both places, but a surplus over the execution, which was paid back to the Defendant. And this fact goes far to explain the anxiety of Jarrell, testified to by this witness, to get the sale through before Rawson returned, and his hurrying up the settlements. The surplus of the sales, after satisfying the Fi Fa, was subject to the lien of Rawson. If Jarrell could succeed in getting it out of the Sheriff's hands before Rawson filed his claim it was that much money in his hands. But this witness says that "he does not know whose money purchased the land," and that is conclusive upon that point. P. 35. But say that Echols did pay the money of Jarrell, where is the notice of that badge of fraud to D. B Harrell? It is not pretended that it is the evidence.

6th. But complainant further says: Jarrell remained in possession.

It is proven by the evidence of Feagin, p. 36, that Jarrell remained on the place until about the close of the year.

The rule is that possession, *unexplained*, after sale is a badge of fraud. Here is the explanation of Jarrell's remaining on the place.

Josiah Harrell's testimony, p. 45:

"After the sale I never knew Jarrell to claim the land. From what I heard *Jarrell*, and Echols say, Echols controlled the land after the sale."

Mr. Clark, p. 54:

"He was at the Snelling place, but I think he called his father's place his

home."

D. B. Harrell, page 66:

"When I went to see Jarrell about 1st November, I went to collect a lumber account. Jarrell and Echols were both on the place. They told me of the Sheriff's sale, and that Echols had bought the property, but was allowing Jarrell to remain on the property till he gathered the crop." In Georgia *growing* crops pass with the land; *matured* crops do not. See 6th Ga. Reports, 452.– Pitts vs Hendrix.

Grimes says, p. 40:

"Jarrell had a crop on the Snelling place in 1867 It was not all gathered when the land was sold."

It was matured, though, for the sale was in October, and Jarrell had the right to enter and remove his matured crops. With Echols' permission to do so, and a legal reason for it, this badge of fraud is completely annihilated.

As far as D. B. Harrell is concerned, it is completely removed; for the only evidence that connected him with a knowledge that Jarrell remained on the place explained to him the reason. See his evidence above quoted, page 66.

7th. Complainant insists that Jarrell's renting the places—the Snelling place to Grimes & Bramlett, and the Perry place to Davis, was a badge of fraud.

It is proved by Feagin, p 38, and by Grimes, p. 39, that Jarrell rented the John D. Snelling place to Grimes & Bramlett *as the agent of Echols*, disclosing to the parties with whom he contracted his agency, and taking the note from them in the name of his principal, and turning it over to him. Grimes, p. 40. "Echols had the note after Jarrell.'

This cannot be considered a badge of fraud. If, however, by forced construction, it could be so tortured, the evidence fails to bring notice of that fact to D. B. Harrell. There is no evidence when it came to his knowledge, except his answer, and it distinctly states that "he never knew of that fact until long after he traded for the note, when he was so informed by Grimes. p. 22.

By the testimony of Grimes, p. 39, this must have been about the 16th of November, and Harrell could not be bound by notice coming to him after the trade was consummated, the money paid, and conveyances executed.

8th. But, insists the Complainant, Jarrell's insolvent circumstances should have put purchasers upon notice.

Here is all of the evidence as to Jarrell's "insolvent circumstances," and the time it was manifested

Grimes, p. 41:

"Jarrell was a man of large property in 1867."

Josiah Harrell, page 45:

"Mr. Jarrell was a man of large property about the time of the sale."

Williford, his clerk, p 45:

"He had a pretty property about him; some considered him rich and some did not He owned, at that time, the John D. Snelling place, the W. S. Perry places, the Richland place, and in 1867, the Clark place. In 1867 I think he worked over one hundred hands. Frequently borrowed money and cotton. The plantations were well stocked. I should estimate the value of the property on the places, including the mules, at between eight and nine thousand dollars, and should think that he had between thirty-five hundred and four thousand acres of land, worth, at a small valuation, five dollars per acre The amount of his indebtedness that I knew was small. *I did not think that Mr. Jarrell was preparing for bankruptcy, but thought that*

he was on a firm basis, and that he himself thought so."

Whorton, p. 48:

"I knew Jarrell about that time. He was considered a rich man."

McKinnon, p. 52:

"I considered him good, and he was generally considered good. Jarrell had a large amount of stock on hand, besides these plantations. I don't know how much. In 1867 I think he had a large stock of goods on hand. He had some cotton on hand."

Hopkins, p. 53:

"We were talking of Jarrell, and how rich he was."

Rawson, p. 61:

"I am under the impression that Jarrell had the Perry place, the two places returned in Bankruptcy, and the two places advertised—the Snelling place, and the Richland place. I looked upon Jarrell at that time as good, and supposed he would pay me.'

This is all of the evidence of Jarrell's pecuniary standing up to the sale and for some time after, as we shall presently see.

The witnesses who testify are his clerk, Williford, who was in a better condition to know his pecuniary standing than any one else. His Attorney and legal adviser, Josiah Harrell, who also reasonably ought to have known it.

Rawson and McKinnon, large creditors, whose interest it was to keep advised of it. His neighbors, Whorton, Hopkins, and the omnipresent Grimes. Everyone of those *interested* parties considered him a "rich man" "Standing on a firm basis.' "Did not think he was preparing for Bankruptcy" And is D. B Harrell, who resided in a different county, 16 or 18 miles from Jarrell, whose only business connection with him was to represent him in a law suit, not connected with this litigation, and to sell him five or six hundred dollars worth of lumber, and collect the account, to be charged with a "notice" that these interested parties did not have.

In the first case it is necessary to presume that a man who employs a lawyer in a solitary case makes him a Father Confessor, to whom he unbosoms himself of his whole affairs, even entrusts to him his business reputation.

In the second, that a creditor must presume, when he presents an account to his debtor and it is paid without a word, that his debtor is in insolvent circumstances, and preparing for bankruptcy.

But says Clark, page 54:

"I had a conversation with Judge Harrell about the case, (Clark's case,) and endeavored to get him to have Jarrell to compromise with me, and told Judge Harrell that Jarrell was irretrievably broken'

Well, suppose that he did. He had charged the same thing in his bill, and Jarrell had denied it on oath (Harrell's evidence, p. 65.) Jarrell had paid his, Harrell's, fee. Had paid, on demand, a bill of five or six hundred dollars for lumber. And upon which should have Harrell relied? upon the statement of Clark, or upon the oath of Jarrell, and his meeting his money demands whenever called upon?

And this, too, was in December, long after the Sheriff's sale. Up to this time there was no hint of Jarrell's insolvency. No suspicions by his neighbors. No distrust by his creditors. No knowledge by his confidential clerk or his legal advisor. The sacrifice of a portion of his property had not alarmed his creditors. He was still considered a rich man. Two good plantations, as valuable as the "Snelling place," (Rawson, p. 61,); "Well stocked, (Williford, p. 46); A large stock of goods and some cotton," (Mc-

kinnon, p 52.) Every one thought he would overcome his embarrassments, and again "stand on a firm basis."

What was the reason that he failed to accomplish this? And when was it that this fact became apparent, and any person charged with notice of his "insolvent circumstances?"

The evidence discloses both the reason and the time—long after the Sheriff sale.

Says Rawson, p. 61:

"Cotton went down very low in the fall."

Williford, page 46:

"The year 1867 was very disastrous to farmers; those selling in the fall lost money. Cotton was selling very low, about eight or ten cents, in December, 1867, and in January, 1868."

Then it was, in that dark and trying time for the farmer—when princely fortunes were pricked as a bubble—when the rich man's surplus and the poor man's *all* were swept away as by a torrent—that Jarrell went down in the wreck, and his creditors became uneasy. Rawson had relied upon after the sale, as is evidenced by his taking no steps to secure his debt. Clark did not allow his faith to be shaken until December. McKinnon, to whom he owed eight or ten thousand dollars, "still considered him good, and he was generally considered good" up to February, 1868, when *he* "became alarmed, had him arrested on bail process, and he went down to Savannah and filed his application for discharge in bankruptcy and ran away."

Here is both the reason and the time that Jarrell contemplated bankruptcy. When he was in the custody of the Sheriff, about to be consigned to the walls of a dungeon, by McKinnon, he seized upon his only avenue of escape and went to Savannah and filed his application. And this was on 27th day of February, 1868, nearly five months after Echols had purchased the land in market overt, after four week's notice in public gazette—in the presence of Jarrell's principal creditors, the only one who could have been interested in this land bidding against him.

But, says complainant, Harrell knew of Jarrell's insolvency and the proceedings in bankruptcy when he purchased from Echols. Grant it. But look on the other side at what he knew.

He knew that Echols had bid off the land at public sale in the presence of Jarrell's creditors, the principal one, Rawson, bidding against him. That Echols went into possession under the sale permitting Jarrell to remain and gather his crops. That the contract for the rent for 1868 was made with Echols in writing, with no notice that Jarrell, even as the agent of Echols, had anything to do with it. That more than a year had elapsed and none of Jarrell's creditors had opened their mouths. Not Rawson himself. That eight months had rolled away after Jarrell's application in Bankruptcy, and not a move by his Assignee against Echols, whose muniments of title had been recorded immediately after the sale and the world put on notice of his ownership. He knew all of these facts and not a word coming to him from Jarrell's clerks, his legal advisor, his neigbors nor his creditors, informing him that the titles of Echols was distrusted, much less tainted with fraud.

And with all of these circumstances in support of the *bona fides* of Echols' ownership, it is sought to charge Harrell with constructive notice of a fraudulent combination between Jarrell and Echols, by inference, and without proof.

In this connection, there is another fact that is remarkable: After Harrell's purchase from Echols, nearly a year elapsed before the Assignee, who had been appointed over 18 months, commenced proceedings against him.

This acquiescence of creditors, and the Assignee, is a circumstance from which it could be reasonably inferred that Echols' title was good and would not be disturbed; or, at least, to exhonerate the purchaser from Echols from a suspicion of a want of good faith.

9th. Now we come to examine the main ground urged by complainant—why the sale was fraudulent—"Inadequacy of consideration." And as this is charged in reference to all of the items of property involved in this case, we will consider it in reference to each.

1st In reference to the Tompkins note:

There is not a syllable of evidence as to the consideration paid by Echols to Jarrell for this note. The proof shows that it came to his possession before it was due, for he traded it to Harrell before its maturity, (Harrell, p. 23.) It was negotiable paper, and the presumption of law is invariable in the absence of proof That a holder of such a paper is a purchaser for value and without notice There is nothing in this case to change the rule as to Echols, much less to Harrell.

2nd. Inadequacy of consideration as to Grimes & Bramlett, and the Davis notes:

We have already seen that the Davis note was made direct to Echols for the rent of the Perry place, Echols' title to which is not shaken by the evidence in this case, so that there can be no inadequacy of consideration as to that

The Grimes & Bramlett note was given for the rent of the "Snelling" place—taken by Jarrell as the agent of Echols. There is a good consideration, and no notice whatever, is brought home to Harrell that would affect his title.

3rd Inadequacy of consideration for the W. S. Perry place:

The only evidence of consideration, whatever, is the recital in the deed. Conclusive, unless rebutted.

4th. Inadequacy of consideration at the Sheriff's sale, for the John D. Snelling place:

Inadequacy of price at a judicial sale, where all the requirements of law as to notice, &c., have been complied with, cannot be set up to invalidate it without proof of fraud which prevents bids, or unduly influences bidders. Neither is shown in this case as far as the John D. Snelling place is concerned.

The conversations of Jarrell with the Sheriff, and with Rawson, which are the only occurrences *before the sale* relied on, do not show such a fraud; for both of these conversations were with the parties respectively, and the conduct of Feagin nor Rawson was not influenced by it.

Feagin says, p. 37,

"That he did nothing to aid Jarrell in carrying out any design to defraud creditors, but made the sale as he was in the habit at all sales."

Rawson bid as long as he chose, and gives the reason why he did no longer. (Rawson's evidence, p. 61:)

"I did not bid for the Snelling place, because I did not want it, as I did not want to buy land."

"Grimes, p. 41:

"Saw nothing improper in any of the bidders, or the Sheriff, at the sale."

Beall says, p. 43:

"Saw nothing unusual at the sale, except Jarrell's trying to reduce the price of his own land."

This only refers to the "Richland" place, as Beall's testimony shows, p. 42. "After the sale (of the Snelling place) was through, and the "Richland

place" was being sold Jarrell came to me and asked me to announce that I controlled an execution in favor of John S. Yarborough vs Dr. Alston of whom Jarrell had bought the place, and that it was a lien upon the land. I told him that I was not instructed to do so. He then asked me that he might get Mr. Wimberly to do it for him, and I consented He then called Mr. Wimberly and asked him to make the announcement, who did so, while the land was being sold."

No evidence of word or act, by Jarrell, to affect the Snelling place. His only effort to "reduce the price of his land" was confined to the Richland place, and, as before remarked, for a legitimate reason.

It was the home that sheltered his aged father, (Whorton, p. 48) "He was living on the Richland place in 1867." Who had sold his place near Doon, in Randolph county for twelve hundred dollars' And with that money was to pay for the "Richland' place if he bought it at Sheriff's sale And who did so pay for it, (Whorton, p. 42, and Prothro, p. 55)

Jarrell's reasons for wishing that place to sell for as small an amount as possible can be readily seen, and his acts following his wishes—but not a word as to the "Snelling place."

Did Rawson do anything to affect the sale of the Snelling place, or to influence bidders? He made the announcement of his lien, but immediately neutralized it by bidding for the land himself. There can be no question but that such an *active acquiescence*, a participation in the sale by Rawson divested his lien, and transferred his claim to the money arising from the sale. Had he been the actual owner of the land, such a participation would have given to the purchaser a good title as against him. *And he is the only creditor of Jarrell's* who can be benefitted by setting aside this sale.

There being no proof that Jarrell or Echols, the Sheriff or Rawson, prevented bids or influenced bidders by any frauds, if the legal proposition above stated is correct, then the inadequacy of consideration falls to the ground, and with it the complainant's case.

But, if it is not correct, and "consideration" is material in this case, an examination of the facts will show that it was not sufficient to invallidate the sale.

Feagin values the land, by comparison with the Perry place, at $4000.00. p 38.

Grimes places it at $5.00 per acre, $8000 00 p. 39.

Rawson at Eight or Nine Thousand.

Harrell at $4000.00

Feagin, in December after the sale, had valued it at $1600.00, one dollar per acre

A fair view of the testimony would place the value of the land at four or five thousand dollars, though Feagin's value of it, in December, at one dollar per acre being the nearest in point of time to the sale, would place it at only $1600.00. And Harrell, the owner, who has had it on the market, states that four thousand was the largest price he had been offered for it, and this, too, in cotton, upon time.

The price of property is influenced by other considerations than its value, and the considerations that affected the price of real property in the State of Georgia at this time were peculiar. There was no recognized civil government. A Military Commander exercised the sovereign power. General Pope had only a few days before (Sept. 19, 1867,) ordered an election for delegates to a Convention for the purpose of forming a State Government.

The election was to be held on the 29th, 30th and 31st days of October. The colored people, who constituted nine-tenths of the labor in that section

of the State, and whose labor, alone gave value to land, were just enfranchised. It was their first election. Some of them were candidates, and nearly all had deserted the farms for the hustings, jubilant in their new privileges. The white people, with few exceptions, were standing aloof, taking no interest in the election. With the labor of the country demoralized—its business suspended, and thousands of its citizens terror-stricken by apprehensions of domestic violence, it is rather to be wondered that sales were affected at any price, rather than small ones. Indeed, no one, outside of the State, especially the Southern portion, called the "black belt," can have an adequate conception of its situation at this time, and word fail to paint it true to the mind. A dark pall, comparable only to the interdict cast by the Pope upon the realms of France in the reign of Philip Augustus, hung over the State. Hundreds of citizens sold their property at any price they could get—some of the finest farms in the State, from twenty-five and thirty cents to one dollar per acre—and fled the country, seeking refuge from anticipated ills in Brazil, Mexico and Cuba.

These are historical facts.

In addition to these influences, there were others of a financial nature. Cotton, the great Southern staple upon which all values depend, had tumbled from 25 and 30 cents per pound to 8 and 10. Rawson's testimony, p. 61 and Williford's, p. 46. And in its fall carried nearly every one that had anything to do with it. The Sheriffs and U. S. Marshalls were busy bringing to the block the property of those who had fallen, and no capital with confidence in the future, to prevent its sacrifice. This is no fancy picture, but the evidence is brought forward in instances where no taint of fraud is paraded to influence prices.

Feagin says, p. 37:

"He sold other lands that year at Sheriff's sale. * * * * All lands sold at Sheriff's sale that year brought *very* much below their value."

Grimes, p. 41:

"Don't know of any lands being sold for cash in Stewart county *during the year*. They would have sold for *less than their value*, if sold *for cash*."

Whorton, p. 48:

"Lands that were sold at Sheriff's sale in 1867, sold *very cheap*, and did *not bring anything like their value*.

"The Rutherford place sold for one dollar per acre.'

"A house and lot in Preston, worth *One Thousand Dollars* and sold for *Fifty dollars*.'

Prothro, p. 56:

"Lands in Stewart county, in 1866 and 1867, were low. Would not have brought their value."

Rawson, p. 61:

"Bought nine hundred acres for fourteen hundred dollars."

D. B. Harrell, p. 66, and corroborated by all of the witnesses:

"In 1867 and 1868 I bought several places, and lands were remarkably low. At forced sales they hardly brought anything. The Bell plantation, eight hundred acres, equi-distant from the Snelling and Richland places, about five miles from each, brought only two hundred dollars, under a Tax Fi Fa. Bought a lot, (202½ acres) adjoining the Richland place, for Ten Dollars, duly advertised, and at Sheriff's sale. Bought a half lot at Marshal's sale in Macon, at One Hundred and Fifty Dollars."

So it is a fact, established by evidence of all the witnesses, that lands, at that time, at Sheriff's sale, "would not bring anything like their value." "Would hardly bring anything." Were sold for a song—and instances

given—and the reasons for it—by the testimony of witnesses and the history of the country, and why is it that the low price at which this land sold is to be imputed to fraud, which is not proven, rather than to its legitimate causes, which are shown to have equally affected all sales of land made at this time?

Or, if imputed to fraud, why is Harrell to be affected by it when no notice of any of the alleged fraudulent acts of the parties is brought home to him. Nothing to put him upon enquiry except the low price at which the property was sold, which is proven to have equally attached to all sales of property, at that time, and which is accounted for by the history and condition of the country

Next as to the allegations of inadequacy of consideration between Echols and Harrell, and

1st, As to the notes—

Davis's note for seven bales of cotton.

Grimes & Bramlett's for eight bales and twenty-five dollars.

Tompkins for five bales

The two first, as we have seen, came in due course of trade, before due, to Harrell, without notice, that Jarrell had ever had them in possession, or seen them. The Tompkins' note was made payable to Jarrell, or *bearer*, but come to Harrell without notice of any fraud between Jarrell and Echols in regard to it.

The amount paid by Harrell for the notes was seven hundred and fifty dollars.

Was that an adequate consideration?

The Davis note "was and is worthless, by reason of the insolvency of Davis." Harrell's evidence, page 20.

This brings down the solvent notes to thirteen bales of cotton. Cotton, in December, 1867, and January, 1868, was worth from 8 to 10 cents. At that time the notes would have been worth four hundred and eighty-five dollars. In the fall, when they became due, cotton was worth from seventeen to twenty cents in Cuthbert. The notes would then have been worth from $1000.00 to $1100.00.

It is respectfully submitted that the price given for the notes, risking the fluctuations of cotton, was fully up to their value. And considering the condition of the country above referred to, in connection with the difficulties thrown in the way of the collection of debts by the new Constitution of 1868, and by the Homestead, Exemption and stay laws then in force, and every other device that legislative ingenuity could invent to hinder and embarrass the collection of debts, it cannot be said, with the least reason, that said amount was not their full value.

As to the inadequacy of price in regard to the lands, both the "Snelling" and "Perry" places, the reasons that applied to Echols' purchase are applicable to Harrell's. It was as much as any lands in the county was selling for, in the condition of the country, stagnation of business and uncertainty in the public mind in that portion of the State.

This is the whole of the evidence applicable to the case, upon each and every charge in the Complainant's Bill.

It has been collated and grouped around each point, so that it can be seen at a glance in regular connection with every disputed question. It was necessary to do this, for the reason that the taking of testimony in other cases with this, by consent of counsel, not only increased the volume containing it but rendered it difficult to sift the evidence, so that each particular proof should have its proper place and legitimate weight in determining the ques-

tion to which it applies.

It was necessary for another reason: This case depends entirely upon *facts*, and these facts upon the *proof*. It is impossible, by simply reading over the confused mass of testimony as originally taken—mixed with other cases—disjointed—obscure—uncertain—different witnesses—hearsay and irrelevant—and properly analyze and understand it, without more time than is usually at the command of a Judge in term time.

The trial of this case in the Circuit Court is a proof of this; for the written opinion of the learned and distinguished Judge who presided, shows that his decision was principally based upon two alleged facts—one of which did not exist, and the other *legally* explained.

1st. He says: "He, Respondent, knew that Jarrell negotiated the renting of the lands.

The proof is that Harrell, the Respondent, *did not* know that Jarrell had negotiated the rent of the lands until *long after* his purchase from Echols, when he was so informed by Grimes, and this, too, only in reference to the Snelling place, as Jarrell had nothing to do with the renting of the Perry place.

2nd. He says: "Harrell saw Jarrell continuing in possession of the property, the same as before the sale."

The only time that Harrell saw him on the place the evidence shows that his remaining there was by the permission of Echols to gather his crops, thus explaining to Harrell such possession as he claimed, and that, too, by a legal reason. And this, too, even if unexplained, could only affect the "Snelling" place, and the Grimes & Bramlett note. For, as is before remarked, there is no evidence that Jarrell ever had anything to do with the Perry place, or the Davis note for the rent of it.

Take those two facts from the complainant's case and it must fall to the ground.

The same thing may be said of the circumstances cited by the learned Judge to show that Harrell must have had *some* notice of Jarrell's "insolvent circumstances." Why charge him with notice when his clerk, Williford, his legal advisor, Josiah Harrell, his creditors, Rawson, Clark, Wimberly and McKinnon, and his neighbors, Grimes, Whorton and Hopkins, did not suspicion it?

And now a brief synopsis and the case is presented:

1st. As to the promissory notes:

There is no *act* of fraud proven between Jarrell and Echols *directly connected* with the notes, or either of them. *General* acts of fraud between them, even if proved, and none are in this case, that the notes do not show upon their face, so as to give notice to a purchaser or not proven by evidence, *aliunde*, to have come to his knowledge, could not affect the Respondent's title who purchased them before maturity, and for a valuable consideration.

The presumption always is that a negotiable security for debt in the hands of a third person, came to him before due, for value, and without notice of any fact that would impair his title.

This legal presumption is not rebutted by proof in this case.

2nd. In regard to the W. S. Perry place.

There is an entire absence of evidence of fraud connected with this place, and the same observations made above as to the notes, will apply to this

place. General acts of fraud, even if established, by proof *not directly connected* with the specific property, would not be notice to a purchaser for value unless the evidence was strong enough to overturn all of the circumstances showing his good faith. And no notice of even general acts of fraud is proven as to this place. The rent was not negotiated by Jarrell, nor was he at any time, after the sale to Echols, in the possession of it as is alleged in reference to the Snelling place.

3rd. As to the Snelling place.

The Complainant has failed to establish his charges of fraud in the Sheriff's sale sufficiently clear to invalidate the title even in Echols, much less in the Respondent.

The first ground which he insisted showed fraud, to-wit: "That Jarrell procured the land to be levied on and sold," is not proven.

The 2nd. "Jarrell's conversations and declarations of intentions to the Sheriff and others" fails to prove it. Most of these conversations took place after the sale. Echols was not connected with any of them, and by the direct evidence of each witness, who testified as to conversations with Jarrell, the Respondent, D. B. Harrell, had no notice of them.

The 3rd ground: "Because Echols was a poor man and without means," is not sufficiently proven to establish fraud. And if his impecuniosity had been ever so clearly shown, notice of it to the Respondent, Harrell, is not proven.

The 4th ground: "That Echols was the Clerk of Jarrell" does not show fraud.

The 5th ground: "That Echols paid not his own, but the money of Jarrell for the land," is not proven.

The 6th ground: "That Jarrell remained in possession after the sale," is so explained by the evidence as to deprive that fact of all strength as a badge of fraud; and more especially as to the Respondent, D. B. Harrell, to whom the explanation came directly with his knowledge of that fact.

The 7th ground: "That Jarrell rented the lands," does not prove it. He explained his agency to the persons with whom he contracted, at the time of the contract Besides, he only rented the Snelling place, and lastly, *the Respondent did not know of this fact until after he had purchased from Echols.*

The 8th ground: "That Jarrell's insolvent circumstances should have put Harrell upon notice" is counteracted by other circumstances that show that they could not have this effect.

His legal advisor, his clerk, his creditors, nor his neighbors, were not so placed on notice, all of whom had a better opportunity of knowledge than the Respondent, who resided in a different county.

The 9th ground: "The inadequacy of consideration," is accounted for by the history of the country—by its financial condition, and by direct evidence of sales of land in the same neighborhood at lower prices—these sales having no imputation of fraud made against them.

ON THE CONTRARY THE EVIDENCE ESTABLISHES

1st. That the levy was procured by Gillis, the Attorney of the Plaintiff in Fi Fa, under general instructions from his client to make the money

2nd. That it was advertised according to law

3rd. That the Sheriff sold the land as he did other property.

4th. That there was present about the usual number in attendance upon Sheriff sales.

5th. That no one was prevented, or hindered from attending, or induced to remain away by Jarrell or Echols.

6th. That no one was prevented from bidding by Jarrell or Echols.

7th. That the property was "cried" the usual time.

8th. That Rawson, to whom alone any benefit would accrue by setting aside the sale, by reason of his mortgage, and its amount being in excess of the value of the land, bid at the sale; thus neutralizing any legal effect his announcement, *previously made*, might have had upon purchasers.

9th. That other creditors were present.

10th. That Echols was the highest and best bidder; that as such, the land was knocked off to him; that he paid his money there or, which was credited upon the Fi Fa, extinguishing Jarrell's debt, and if the land is condemned and re-sold, the creditors of Jarrell will have *twice* received its price.

11th. That the conveyance of the Sheriff to Echols was placed upon record, and thus notice given to the world of his claim, and more than twelve months elapsed before the Respondent's purchase, and not one of his creditors - even Rawson himself—opened his mouth against the sale.

12th. That Echols went into the possession and remained therein, by himself and his tenants, more than a year after the sale, and no one questioned his title: and that during that time Jarrell s creditors permitted him to carry off and dispose of his crops, his stock, and other property, which they could have subjected to their debts.

13th. That the Assignee of Jarrell did not disturb Echols about the land, although appointed about eight months before his sale to Respondent; nor the Respondent until more than twenty months This acquiescence of creditors, and the Assignee, counteracting any suspicions that, otherwise, might have been entertained in reference to the titles, and completely rebutting all of the circumstances relied on by complainant to ch rge Respondent with *constructive* notice of defects of title.

14th. That during all of this time, from the sale to the present, Jarrell has advanced no claim to the land, and no connection between him and Echols shown in regard to it, except the permission given him by Echols to remain thereon, to gather his crops—his acting as the agent of Echols to rent it to Grimes & Bramlett—both of those acts are consistent with a clear title to Echols.

15th. That the low price at which the land was sold is accounted for and explained upon a more reasonable hypothesis than by imputing it to fraud.

16th. That if the circumstance of Jarrell's trying to lessen the price of his own land at the sale was a badge of fraud, it only extended to the Richland place. And his reasons for doing so in regard to that place—to enable his father, who resided there, to buy it—being apparent, it would not go to the extent of notice of fraud in the sale of the Snelling place, especially as he made no effort to lessen the price of that place.

17th. That the testimony taken with this, by consent of Counsel, and therefore proper to be considered, shows that Jarrell's immediate neighbors, Smith, Clements and Prothro, had never heard of any of the *alleged* fraudulent acts of Jarrell, even in relation to the Richland place, upon which Wimberly, at his request, announced a lien—and in good faith purchased it. If his immediate neighbors did not have notice in regard to that place, is it reasonable that Harrell, who lived at a distance, should have had *notice* in regard to the Snelling place, to affect the sale of which Jarrell did nothing?

18th. That there is no proof, at all, of the allegations in Complainant's Bill that the respondent Harrell, was the legal advisor of Jarrell or Echols, and as such took the titles to the property to further any fraudulent design of either of them.

19th. That upon a close and fair analysis of the evidence, there is no proof of notice of fraud coming home to the Respondent in this case. That the only two facts relied on by complainant to show *constructive notice*, to-wit: Respondent's appearing as counsel for Jarrell in the Clark case about another matter, and his knowing that Jarrell remained in possession after the sale. The first fails to do it, because it would have been unreasonable and contrary to general experience and observation for Jarrell, against every rule of a business man, to have informed his Attorney, incidentally employed, in a single case, of all of his business affairs, or that he was in embarrassed and failing circumstances and endeavoring to defraud his creditors. And as to the second, Jarrell and Echols both explained to Harrell, when he went to collect his lumber account, the reason of his remaining there.

It is only possession after a sale unexplained, that is a badge of fraud.

20th. That Jarrell, nor Echols, (who was in the county more than twelve months after the sale, and when the frauds alleged by Complainant, if they existed, must have been known to the Assignee, and Jarrell's creditors) have not been brought forward by Complainant as witnesses. And that of the number of persons testified to by the Sheriff and others as having been present at the sale, not a single *disinterested* one is produced as a witness by him; but only those *who are* either by being large creditors of Jarrell, or by being concerned with the Assignee.

It is respectfully submitted that—

All of these facts and circumstances, *fully proved*, are sufficient to sustain a *public judicial* sale against no proof whatever, except the vague, uncertain and doubtful surmises and impressions of interested witnessess, that arise from loose conversations with an embarrassed and *sick* debtor, with his creditors clamorous for their money; and this, too, mostly *after* the sale, and of which Echols nor Harrell, the Respondent, whose rights are sought to be affected, knew nothing

APPENDIX A.

SYNOPSIS OF BILL.

The bill alleges—

1st. That on the 25th of February, 1868, William L. Jarrell was adjudged bankrupt, indebted to a large number of creditors, the property embraced in his schedule inadequate to pay them, and that complainant, Elisha H. Beall, was, on the 13th of March thereafter appointed his assignee.

2d. That before this time, to wit, on the 1st day of October, 1867, the said William L. Jarrell was in the possession of two tracts of land, known as the *John D. Snelling Place* and the *W. S. Perry Place.*

3d. That on the 27th day of August, 1867, with intent to hinder, delay, and defraud creditors, he procured an execution, which had been rendered against him and one Jubilee Smith in favor of Jeremiah Culpepper, at the October Term, 1860, of Stewart County Superior Court, to be levied on the *John D. Snelling Place*, and another tract of land, known as the Richland Place, and on the first Tuesday in October, 1867, caused the *John D. Snelling Place* to be sold by the sheriff, when it was bid off by one A. H. Echols, who was at that time clerk and agent of the said W. L. Jarrell, at the nominal sum of $725, when it was worth $10,000, to whom he caused the sheriff to make a deed in pursuance to said sale.

4th. That at and previous to said sale the said Jarrell was indebted to one W. A. Rawson, $11,317.78, by note, secured by a mortgage on said John D. Snelling Place, dated 13th March, 1866, and due January 1, 1867; and that the object of Jarrell in procuring said sale was to defeat the lien of Rawson's mortgage, and to accomplish this he used deceitful means to mislead and deceive Rawson, (who was ignorant that the judgment under which the land was sold was of older date than his mortgage,) by

repeatedly assuring him that the sale would not take place, by procuring him (Rawson) to announce that the land was sold under the incumbrance of his mortgage, to throw him off his guard, and prevent him from bidding at the sale or stopping it by paying the amount due on the execution; and but for this fraudulent and deceitful conduct of Jarrell, to which Echols was a party, Rawson would have ran the land to its value, or paid off the execution, to protect himself. That he fraudulently concealed the fact that the execution selling the John D. Snelling Place was older and superior in dignity to the Rawson mortgage; that he knew that the bystanders were of the belief that the mortgage was the oldest, and induced Rawson so to believe by announcing to him that such was the fact.

5th. That notwithstanding said sale on the first Tuesday in October, 1867, the possession, use, and occupation of the *John D. Snelling Place* remained in *William L.*, unchanged and as if it were his own, until the month of January, 1868, when he rented it to Grimes and Bramlett, the agreement for the rent thereof being made by William L. in person, for himself, as his property, the name of Echols not being mentioned; nor did said William L. pretend at that time that the land was the property of Echols, he (Echols) never having been, since the sale up to the present time, in the actual possession of said land.

6th. That on the same day the Richland Place was sold, under the same execution, and purchased by Willis S. Jarrell, the father of William L., the bankrupt, for much less than its value; that this result was procured by the deceitful and fraudulent acts of *William L.* to prejudice the sale whilst it was being made; that he proposed to the sheriff, before the sale commenced, that if he would arrange the sale so that the property would bring only a small sum, he, William L., would afterwards sell him a part at a very low price, much less than its value; that he announced, and got other persons to do so for him, that the land was sold subject to other and superior liens—that it was subject to a large execution against the person from whom he purchased it.

7th. That after the sales were over, *William L.* hurried and superintended the settlements and execution of the deeds by the sheriff, in which he was assisted by the plaintiff's attorney; that the money was paid over by *Willis S. Jarrell* for the *Richland*

Place, and immediately handed to said attorney, then immediately A. H. Echols, with this identical money, settled with the sheriff for the *John D. Snelling Place*, and the balance of the money, after satisfying the execution, was paid over to *William L.*, the bankrupt.

8th. That on the 7th day of October, 1867, the said William L., with the same fraudulent intent charged above, and to prevent his property from coming to the hands of his assignee, conveyed by deed to A. H. Echols, the W. S. Perry Place, for a pretended consideration of $3,400, not one dollar of which was ever paid; but said deed was without consideration, and made with intent to hinder and delay creditors. That the said *William L.* remained in possession of that place also until January 4, 1868, when he rented it to one J. K. Davis, taking his obligation for the rent payable to A. H. Echols, though he had rented it as his own, and had not mentioned the name of Echols as having anything to do with the land, or any connection therewith; nor did Echols ever have possession of the same. That Echols was at the time of the sale a young man, wholly without credit, property, or means, in the employment of said William L., and his agent in the transaction of these and other business matters.

9th. That during these times, *William L. Jarrell* was in failing circumstances, and concocting a scheme, with the aid and assistance of Echols, to defraud his creditors. That by himself and Echols, mostly by the latter, he removed from the county to distant places his personal property, consisting of his cotton crop raised that year, his mules and other personal property, and sold the same, received the money therefor, applied for the benefit of the bankrupt act, and under cover of said adjudication, fled from the court, the county, and his creditors, in company with Echols, and is now in Lincoln county, Kansas. That after their flight, *William L.* returned, but kept himself secreted so that only his confederates and particular friends could communicate with him.

That on the 1st of October, 1868, Echols also returned and offerred to sell both places, the *Snelling* and *Perry*, but so notorious was the frauds practiced by both Jarrell and Echols, he could not get an offer for them, and that during the time he was trying to sell, he admitted his title was not good.

10th. That after he had failed to make sale of said lands, he conveyed them to D. B. Harrell, for a pretended consideration

of four thousand dollars. That D. B. Harrell did not pay consideration therefor, but took said conveyance as the agent and legal adviser of the said William L., and for his benefit. And that at the time, said D. B. Harrell had full knowledge of the facts hereinbefore stated, and that Echols was not the *bona fide* owner of said lands. That he knew of the frauds hereinbefore stated, in the sale of the lands to Echols; he knew that Echols was holding the land fraudulently against creditors, especially the mortgage of Rawson on the *John D. Snelling* Place, of the existence of which Harrell had full and complete notice. That he knew the circumstances of Eichols, that he was poor and without means to buy the land in good faith and was but the clerk and agent of William L. Jarrell. That he knew Jarrell and his circumstances, and that he had kept possession of said lands after the sale, until January 1, 1868. He knew that Jarrell used and controlled them as his own, that he rented the Snelling Place to Grimes and Bramlett, and took notes payable to Echols as a mere sham, that Echols had never been in possession. That he knew of the connection of Jarrell and Echols in the fraudulent transactions enumerated, and that the sale of the lands and the running off and disposing of personal property was done with a view to bankruptcy. That he, *D. B. Harrell*, was one of Jarrell's attorneys in the preparation of his application and schedule; knew the sheriff's sale and conveyance of both places to Echols was a fraud upon the creditors of Jarrell, and intended to hinder, delay, and defeat them.

11th. That on the day of 186 the said *William L. Jarrell* had rented another place to one W. J. Tompkins, and took his note therefor, which he transferred to D. B. Harrell without consideration, and to defraud creditors.

The bill prays for discovery.

First. That Grimes may answer whether he did not rent the *John D. Snelling Place* from *Willium L. Jarrell* as his own property, and whether Jarrell mentioned Echols as the owner of it.

Secondly. That D. B. Harrell may answer—

1. Whether he was acquainted with Jarrell and his pecuniary circumstances.

2. Whether Echols was his clerk, poor and without means, and dependent upon his salary for a support.

3. Whether he did not reside, in 1867, near and knew the relations subsisting between Jarrell and Echols, and whether he did not know of the fraudulent sale of the Snelling Place by the sheriff and the running off and sale of the personal effects of Jarrell, as alleged.

4. Whether he did not receive from W. L. Jarrell the obligations for rent of Grimes & Bramlett for the Snelling Place; that of J. K. Davis for the W. S. Perry Place, and that of W. J. Tompkins, and what considerations he paid therefor.

5. Whether he does not hold the title to said lands for the benefit of Jarrell or Echols.

6. If he holds the same for himself, what consideration he paid therefor, and whether the payments were not contingent.

7. Whether the John D. Snelling Place was not worth $10,000 at the time of the conveyance, and at this time.

8. Whether it was not notorious in the neighborhood that Jarrell and Echols were acting in concert to defeat the object of the bankrupt law, and to defeat creditors.

9. Whether, at the time of the execution of the deeds, Echols was in the possession of the lands, or any part thereof.

The bill prays that the sheriff's deed to Echols for the John D. Snelling Place, Jarrell's deed to Echols for the W. S. Perry Place, and both Echols' deeds to D. B. Harrell for the *Snelling* and *Perry Places*, and the transfers of the obligations of Grimes & Bramlett, J. K. Davis, and W. J. Tompkins to D. B. Harrell be declared void, and that all of the property named, that is, the Snelling Place, the W. S. Perry Place, and the three promissory notes or obligations, be declared assets in the hands of the assignee for the payment of Wm. L. Jarrell's debts.

Grimes, in answer to the interrogatories propounded to him, denies that William L. Jarrell rented the John D. Snelling Place to him as his (Jarrell's) own property, and states that Jarrell did mention Echols as the owner of it, and that he rented it from Jarrell as the agent of Echols, and so gave his note.

D. B. Harrell, in answer to the first interrogatory propounded to him, says that he was acquainted with Jarrell, but not with his pecuniary circumstances.

To the second: That Echols was doing business there, but whether as clerk or as a party interested respondent did not know. Did not know of Echols' pecuniary means.

To the third: Did not reside near and know the relations between them. Did not know of any fraud in the sale of the John D. Snelling Place, or the running off and sale of the personal effects of Jarrell.

To the fourth: Did not receive from Jarrell the obligations for rent of Grimes & Bramlett for the Snelling Place, that of J. K. Davis for the W. S. Perry Place, or that of W. J. Tompkins, but purchased them of A. H. Echols before due, and for $750 consideration.

To the fifth: That he does not hold the titles to said lands for the benefit of Jarrell and Echols, or either of them.

To the sixth: That he holds the same for himself, bona fide, having paid the sum of thirty-four hundred dollars for them; that the payment was not contingent, but cash.

To the seventh: That the John D. Snelling Place was not worth $10,000 at the time of the sale, or at this time, but between four and five thousand dollars.

To the eighth: That it was not notorious in his neigborhood that Jarrell and Echols were acting in concert to defeat the object of the bankrupt law and creditors; if so respondent did not know it.

To the ninth: That at the time of the execution of the deeds Echols was in possession of the lands by himself or his tenants.

The answer of Harrell also in general terms denies each and all of the allegations of the bill, of a knowledge on his part of any fraud, if there was such, between Jarrell and Echols, and sets up that he was a bona fide purchaser for a valuable consideration and without notice of any defect of title of the lands, and that he purchased in good faith, for a valuable consideration, and before they were due, the three promissory notes, without notice of any fact that would invalidate them in his hands.

APPENDIX B.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF GEORGIA. } *ss.*

I, James McPherson, clerk of the Fifth Circuit Court of the United States of America, for the Southern District of Georgia, do hereby certify that the writing annexed to this certificate is a true copy of its respective original on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the City of Savannah, in the Southern District of Georgia, this fourth day of August, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States the ninety-sixth.

[SEAL.] JAS. MCPHERSON, *Clerk.*

E. H. BEALL, ASSIGNEE OF WM. L. JARRELL, BANKRUPT,
vs.
DAVID B. HARRELL ET AL. } Bill in Equity.

Opinion of the Court—Mr. Justice BRADLEY presiding.

This bill is filed by the assignee to have declared void certain sales and conveyances of the bankrupt's property, alleged to have been made in fraud of the bankrupt act, and for the purpose of defrauding the creditors of the bankrupt, amongst others a sheriff's deed to one Echols for a lot of 1,640 acres, known as the Snelling Place, and a deed from the bankrupt to the said Echols for another lot of 680 acres, called the Perry Place. The sheriff's sale took place October 1st, 1867, and the conveyance of the Perry Place October 7, 1867. The defendant, Harrell, purchased the property of Echols about a year afterwards, and, whatever may have been the character of the original sales, claims to be a *bona fide* purchaser without notice.

It appears from the statement of the bill and answer, as well as from the evidence, that in and prior to the year 1867, Jarrell, the bankrupt, had been running several plantations in Stewart county, including those in question, and was carrying on a store

and other business to a considerable amount, and became largely indebted beyond his ability to pay. Echols was a young man, and acted as his clerk and agent, having formerly taught a school in the vicinity.[1] Harrell, the defendant, is a lawyer, living about eighteen miles off in another county, but was well acquainted with Jarrell, and was occasionally employed by him as counsel. It further appears that one William A. Rawson, a neighbor of Jarrell, doing business in the town of Lumpkin, held a mortgage on the Snelling Place, given to him by Jarrell on the 13th day of March, 1866, to secure a note of same date, due January 1st, 1867, for $11,317 $\frac{75}{100}$.

The principal charge of the bill is, that in August, 1867, Jarrell, finding himself hopelessly insolvent, set about to convert his property into money, run it off out of the reach of his creditors, disposed of it in such a way that it could not be reached, and especially to procure a sale of the Snelling Place, for his own account, on an old judgment, so as to cut out Rawson's mortgage, and then go into bankruptcy and get rid of all his debts, and that in this scheme Echols confederated with and aided him. This is the substance, though not the precise form, of the gravamen of the bill.

It specially alleged, that Jarrell procured an execution issued on the judgment referred to, (which was recovered in 1860, and still outstanding,) to be levied on the Snelling Place, and another farm called the Richland Place, and induced the sheriff to sell them on the 1st Oct., 1867; that he offered the sheriff inducements to hasten the sale, promising that if it could be accomplished before Rawson's return from the north, he would sell him a particular piece of land very cheap, and would even give him a small piece which lay with his own (the sheriff's) land. To put Rawson off his guard, it is alleged that he told him the Snelling Place would not be sold, and that his mortgage was a prior lien to that of the judgment, &c., by which representations, Rawson was lulled into security, supposing the representations to be correct. That Rawson accidentally discovered that the sale was going on, and immediately went to the place, but was met by Jarrell, who requested him to announce publicly that the property was sold subject to his mortgage, which he accordingly did, supposing it to be true; whereas, Jarrell knew it to be false. This contrivance had the effect to deter bidders, and especially to prevent Rawson from bidding or paying the judgment,[2] so that the plantation sold for the nominal price of $725, and was bid off by Echols.

The bill further states that at the same sale the sheriff put up

[1] The appellant had no knowledge of Echols or his antecedents.

[2] It could not have had this effect, for Rawson says himself (page 61) "that he did not bid for the place because he did not want it," and if any other person was "deterred" it devolved upon them to show it, and they have not done so.

and sold the Richland Place, which was bid off by Willis S. Jarrell, (father of the bankrupt,) for $1,085, a very small and inadequate price therefor; that this was accomplished by Jarrell, the bankrupt, announcing, and getting others to announce, that the place was subject to a large execution against a former owner, &c. The bill charges that the same money was used to pay both bids, and was not Echols' money, nor old Jarrell's, but was the money of the bankrupt; that a few days afterwards, on the 7th of October, 1867, Jarrell made a deed to Echols for the Perry Place, for the nominal consideration of $3,400; but that no money at all was paid by Echols therefor, it being a mere sham sale.

The bill charges that Jarrell remained in possession of the property, and continued to use it as his own until January or February, 1868, when he rented it to various tenants, the Snelling Place to Grimes and Bramlette, and the Perry Place to J. K. Davis; that Echols had no means of his own, but was used as a tool and agent of Jarrell, by whose means and assistance the latter was enabled to remove his personal property, run it off into Alabama and elsewhere, and convert it into money for his own use; that after having thus disposed of his property, he went into voluntary bankruptcy on the 25th of February, 1868, and soon after left the state, and is now reported to be somewhere in Kansas, and that Echols went off about the same time.

The bill further charges, that in October, 1868, Echols returned and endeavored to sell the property, and the obligations for rent which had been given by the tenants, which had been taken in his name by Jarrell, but that the reputation of the transactions of Echols and Jarrell was so unfavorable and so suggestive of fraud, he could get no purchaser, until, at length, the defendant, Harrell, as the bankrupt's counsel and agent, (the bill surmises,) took a conveyance of the property at the nominal price of $4,000, but without the payment of any money, as the complainant believes, at all events; that he, Harrell, had full knowledge of all the facts stated in the bill, and was not a *bona fide* purchaser.

The bill contains other charges which it is not necessary to enumerate.

The defendant, David B. Harrell, by his answer, admits that he was present at the sheriff's sale; that he saw Rawson there; that he heard Rawson bid at the sale of the Snelling Place, and that he heard Rawson announce that the lands were sold under the incumbrances of a lien in his favor, but asserts that he attached little or no importance to the said announcement; that he knew nothing of Jarrell's connection with Rawson, nor of any arrangement between them, and that not being interested in the least, he paid little attention to the sale.

He says that the land brought about the same that other lands were bringing at that time, it being a season of great scarcity of money and general apprehension, and that so far as he knew the

should have no hesitation in setting aside his deed and decreeing in favor of the complainant.

The real difficulty in the case arises from the claim of the defendant, Harrell, as a *bona fide* purchaser without notice of the fraud.

It is contended on behalf of the complainant that this plea cannot avail him, however well sustained by proof. That the assignee, as soon as he was appointed, became entitled to the property, and no subsequent conveyance of it by Echols could give a title as against the assignee. I cannot yield to this suggestion. An assignee has no better right than any judgment creditor would have to take the property out of the hands of a *bona fide* purchaser without notice.

The real question is, was Harrell a *bona fide* purchaser without notice? His answer seems to be a very full denial, in terms, of every allegation charging him with notice of the fraud itself. Are there any circumstances conceded by him or clearly proved which are sufficient to charge him with constructive notice of the fraud? The complainant relies on several circumstances for this purpose.

Harrell admits by his answer, that he was present at the sale, and heard Rawson's announcement respecting his mortgage, but paid little attention to it. He must have heard, and certainly must be charged with knowledge of the amount at which the property was bid off, a sum merely nominal compared with its real value, less than half a dollar an acre; when he afterwards came to investigate the title, and found that Rawson's mortgage was junior to the execution, it must have occurred to him that the sale had been very strikingly affected by Rawson's mistaken announcement. It must have occurred to him, that either by mistake or design, a wrong had been committed against the creditors.

Again, he admits that he knew Jarrell well, that he acted as counsel for him and Echols, in the fall of 1867, in a very sharply contested case respecting the possession and removal of some of Jarrell's crops. He wrote the answer in that case. He had dealings with Jarrell, had sold him lumber for which he had received 500 or 600 dollars, in the same fall of 1867. It seems hardly possible, that all these opportunities for information, he should not have had some notice of Jarrell's insolvent circumstances, and of Echols complication in his affairs. He saw Jarrell's property sold for a song to Echols, his clerk, and defended them both for running off their crops against an injunction of the court. He saw Jarrell continuing in possession of the property the same as before the sale. He knew that Jarrell had negotiated the renting of the lands.[9] These are circumstances which should have warned a pru-

[9]But not until after his purchase.

dent man, when he came to negotiate with Echols, in 1868, for the purchase of the property, and when he found that Rawson's mortgage was not prior to the execution under which the sale was made, that something was wrong about the sale.

It is clear that the sale was made under a false impression, and that the creditors, particularly Rawson, were entitled to have it set aside. No court would have hesitated a moment to do so, as against Echols, the purchaser.

Is not Harrell chargeable with sufficient knowledge of facts that did occur, to put him on his guard and charge him with notice of the fraud that was practiced? Why did he not seek Rawson and enquire of him?

He found in the hands of Echols, in 1868, the securities for the rents of several farms of Jarrell,[10] he said his eagerness to get ready money for the lands and securities, he was apprised of the difficulty that Echols had in getting anybody to touch the property[11] or have anything to do with it, he must have been apprised of this, for Josiah Harrell, his cousin, after having endeavored to assist Echols out of his embarrasment in disposing of the property, went to Harrell, the defendant, told him the property could be got at a low price, indeed, tried to borrow money of him so as to buy it himself.

He knew that Jarrell had gone into bankruptcy, and had gone off, and that Echols had gone off about the same time. Were not these circumstances amply suffcient to put him on an inquiry beyond that of merely searching the public records?

I do not place much reliance on the fact, that the defendant employed his cousin, Josiah Harrell, to examine the title. If his agent at all, it was merely to examine the records; the negotiation was conducted by himself, in Josiah's absence, and it seems somewhat to Josiah's dissatisfaction; for he supposed he had a tacit understanding to share in the speculation.

Reviewing the admissions of the answer, and the entire evidence in the case, which I have examined with some care, I feel compelled to say that the circumstances in the admitted knowledge of the defendant, are clearly proved to have been known by him, were such as to charge him with notice of the fraud, or, at least, to put him upon inquiry at such sources of information as would have inevitably led to its discovery.

The decree must be for the complainant.

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[10]The legal title of the lands was in Echols, and he had, by his tenants, been in peaceable possession for more than a year and no one had said a word against his titles, to Harrell's knowledge.

[11]Harrell was not apprised of this, for he says he was not, and Josiah Harrell, *who was the agent of Echols*, says that he never informed him.

APPENDIX C.

BRIEF OF APPELLANT.

It is now definitely settled that if a man takes honestly a negotiable instrument, he has a good title, with whatever degree of negligence he may have acted, unless so grossly as to induce the jury to find fraud. And, says Lord Denman, "I believe we are all of opinion that *gross negligence* only would not be a sufficient answer by defendant, when the plaintiff has given consideration for the bill. Gross negligence may be evidence of *mala fides*, but it is not the same thing. We have shaken the last remnant of the contrary doctrine."—(Byles on Bills, side page 126, and cases cited, to wit: 4th Ad. & Els., 870; English Common Law, vol. 31; 10th Ad. & Els., 784; English Common Law, 37.)

Held that such title is not defeated by want of such caution in the purchaser as a careful and prudent man would exercise in the conduct of his affairs, *or by gross negligence*, but may be by *mala fides*.—(4 Ga. Reps., 287.)

The case of Phelan vs. Moss is an exhaustive one upon this subject.—(67 Pennsylvania State Reps., 59–68.)

When a bill seeks to set aside a sheriff's sale on the ground of fraud, some specific fraudulent conduct on the part of the purchaser must be charged—particular acts.—(5 Ga. Reps., 400.)

Mere inadequacy of price, in the absence of fraud and collusion, is not sufficient ground to set aside sheriff's sale and conveyance.—(Green's Chancery Reps., 460.)

The purchase for a mere nominal consideration raises no equity.—(Green's Chancery Reps., 214, and cases cited at bottom page.) 2 - Green's, 214-5

At sheriff's sale *caveat emptor* is the rule; and see further, 3 Halstead Chancery Reps., 34.

Vendees under judicial sales not put to same proof.—(10 Ga. Reps., 74.)

If creditor waits to see property sold under his own and other judgments, and it turns out that the purchaser makes a speculation, then complains of unfavorable circumstances and frauds which demanded prompt action to entitle him to be relieved of their consequences, he is not entitled to favorable consideration of the court.—(1 Stockton's Chancery Reps., 286.)

Sale under prior judgment, even with notice of younger mortgage, purchaser's title good.—(25 Ga., 687; 30 Ga., 653; 3 Cranch., 155; 13 Ga., 443.)

Informalities of sheriff will not avoid sale.—(11 Ga., 294.)

Equity will sustain sheriff's sale, when no fraud and creditors have had the benefit of the sale.—(24 Ga., 40.)

Title depends upon lien of judgment.—(Idem.)

As to notice.—(14 Ga., 145; 7 Ga., 432; 3 Ga., 446.)

Mere rumor is not notice.—(14 Ga., 157.)

The mortgage would not have been notice, because improperly recorded.—(U. S. Statutes at Large, 292.)

Improperly admitted in evidence.—(Idem, 295, sec. 163.)

D. B. HARRELL.